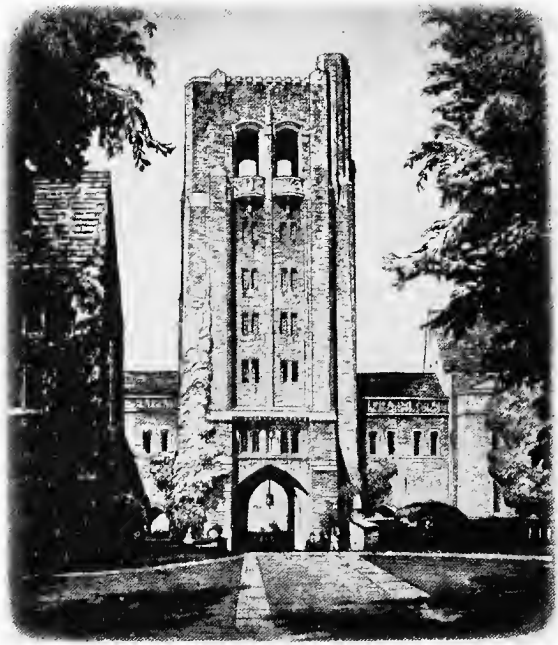

# The Law

OF

# Apartments, Flats and Tenements

BY

WILLIAM GEORGE

Author of George on Partnership

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# PREFACE.

This little volume has been prepared for the use chiefly of laymen and so makes no great pretense to the profundity expected to be found in what is called "A Treatise;" nevertheless if the profession can find it useful so much the better. In his vindication the author will say that, aware of the unhappy character imputed to one who would be his own lawyer, he would retard by no means the alacrity of his reader toward seeking a professional man on the first appearance of trouble. The purpose here is to warn rather than arm.

It has been thought well to divide up the material as though an apartment-house were kept as an investment in each case by some person; he, the *owner,* leasing the whole building to another person, the *proprietor,* to be conducted by the latter as his business in letting separately portions to others again who would be denominated *apartment-holders.* Convenience has been the motive and it is hoped that the method will not confuse. As a fact, in many cases — perhaps in most — the owner conducts the business as his own and lets out the apartments himself or through his agent; if then he has the double capacity of owner and proprietor, that fact ought to make what is contained here none the less easily to be understood. A large part of the contents is devoted to the law of Landlord and Tenant and it has been desired in places to dispense with the word *sublessee,* since where the owner himself operates the house, an apartment-holder would not be

a sublessee at all, except, of course, where the lessee of an apartment himself has sublet. Again, our view includes a glimpse at least of the other relations of "*Bailor* and *Bailee*," "*Master* and *Servant*," "*Principal* and *Agent*," etc. Since the bailee, master or principal may be, according to the connection, either owner or proprietor, confusion is avoided rather by our method. However, treatment of the several topics must necessitate the retention of technical expressions here and there, otherwise the text would seem not to respond to the references that give it authority. The intelligent reader will keep the explanation in mind and apply it as his needs demand.

The reason for dividing up *Landlord* and *Tenant* and treating it piecemeal in three places was that in the effort to avoid repetition as much as possible the various parts of the subject might be put each under the title of the person most likely to be on the lookout for it in an emergency. But for the saving of words it might have been repeated all under the three titles, since properly it applies to all.

The work is but a sketch at best, because the subjects are large and necessarily every book has its limitations. It could not go into all of them at length; that would require a library rather than a volume.

# PART I.

## OWNER.

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## CHAPTER ONE.

### Owner and Proprietor.

1. **Explanation of Words — Lease — Term — Reversion.**

By what is known unscientifically as *a deed,* the owner of houses or lands parts with his estate in the latter for all time,[1] whereas by a lease what he parts with is only present possession. The time — be it long or short — during which, by the provisions of the lease, the possession is to remain away from him is called *the term.* At the end of the term the possession comes back to him, and this coming back — or the expectation of its coming back — is called *the reversion.* It is not inconsistent with this statement to add that this "coming back" may anticipate the end of the term as fixed by the lease, the same taking place for *condition broken,* as it is called: broken, that is,

[1] It is true that technically a conveyance in fee is not necessary to constitute a deed. At common law a deed is "a writing sealed and delivered by the parties," but in ordinary language the term is used in a much more restricted sense as a conveyance of the fee of land. Sanders *v.* Riedinger, 164 N. Y. 564, affirming Cullen, J., in same case in 51 N. Y. Supp. 937.

through some act or omission of one of the parties, the condition referred to being one upon which, according to the lease itself, this outstanding possession was to depend.[2]

**2. Tenancy — What It Is.**

The literal meaning of the word *tenancy* is *a holding*, and its application here is to that possession we have been talking about: and, notwithstanding all we have said, this possession may be enjoyed by the holder, or *tenant*, as he is called, without formalities. But this, it ought to be stated, depends upon the quality of the possession in the respect of permanence.

**Letting for Years — How Assured.**

A letting for a term exceeding three years must be evidenced by a written instrument signed and sealed by the parties, and one for a less term, but over one year, by a written instrument signed at least.[3] A written lease for a term of over three years, if not sealed, can be enforced only as a lease for three years; and an unsigned lease intended to create a term of over one year can be enforced only as creating a

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2 Rapalje & Lawrence Law Dict. title "Condition."

3 The English statute of frauds contains a section which differs from the law generally in the several States of our Union in excepting from its operation parol leases not exceeding three years; hence in England such a lease is good now as before the statute of frauds, when no lease needed to be in writing. But even there, if the lease is not actually commenced by the entry of the tenant, it is held to be only a contract for an interest in or concerning lands — *interesse termini*, as Blackstone calls it — and is void by the fourth clause of the fourth section of the law. Until such entry the lessee cannot be sued for damages for not occupying as tenant, nor for use and occupation. And see Chitty on Contr. 319, 320.

*tenancy at will.*[4] A lease for over seven years should be recorded as well as signed and sealed.

3. Tenancies of Uncertain Duration — Tenancy at Will.

A *tenancy at will* is one that depends on the wills of both parties and comes to an end at the will of either party upon notice to the other party, first duly communicated, of his desire that it shall end.[5] Such a tenancy is created also by one's occupying with the owner's consent but without the formality of a letting. In the case last mentioned the holding begins only on the day the tenant actually enters the premises.[6] An instance of this would be the allowing an intending purchaser or lessee to enter upon the premises in anticipation of his being given formal assurance of title, permanent or temporary as the case might be.[7] Naturally a tenancy at will terminates with the life of either party.[8] If in such a case the tenant is the surviving party, and he continues in possession, the tenancy be-

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4 Although the agreement as to the letting be void (by statute of frauds) as to its duration and there results but a tenancy at will, yet in other respects it regulates the terms on which the tenancy subsists — for instance as to the rent, the time of the year when the tenant is to quit, etc. Riggs *v.* Bell, 5 L. R. 471; Greenleaf on Evidence, Vol. 1, § 263, cited in Cody *v.* Quarterman, 12 Ga. 384.

5 Rich *v.* Bolton, 46 Vt. 84. A mortgage of the property by the owner terminates a tenancy at will, provided the tenant has notice of it. Jarman *v.* Hale, 1 Q. B. D. (1899) 994. See also § 15, *post.*

6 Taylor's Landlord and Tenant, § 68.

7 When one enters under promise of the owner for a valid lease in writing, which promise afterward fails of fulfilment, the owner on resuming possession cannot exact from the tenant payment for use and occupation. Greton *v.* Smith, 33 N. Y. 245.

8 Cruise Dig. 273. A tenancy at will terminates by the death of the lessor. Flood *v.* Flood, 83 Mass. 217; Hollis *v.* Pool, 3 Metc. 350.

comes one at sufferance;[9] and every other tenancy may degenerate into such by the unwarranted persistency of the tenant after the end of the term assured by his lease.[10]

**4. Tenancies of Uncertain Duration — Tenancy at Sufferance.**

A tenant at sufferance is one who comes into possession by lawful title and remains in by no title at all.[11] But for the indifference of the owner there could not be such a tenancy, and it is clear that when this indifference gives way to recognition and tolerance the tenancy becomes one at will.[12]

**Modern Treatment of Tenancies of Uncertain Duration.**

Such tenancies are, however, regarded with disfavor by the courts, and the latter are disposed to treat all tenancies of uncertain duration as tenancies from year to year whenever any good reason may be found for doing so.[13] In New York where the time for

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9 By the removal of the will of the lessor the tenancy at will becomes one at sufferance. Flood *v.* Flood, 83 Mass. 217.

10 The burden is on the tenant, who holds over after his lease has expired, to show that by the acceptance of rent for the subsequent occupation or by some agreement, or by some recognizing otherwise of the relation of landlord and tenant, the landlord has assented to a continuance or renewal of the same relation. Moore *v.* Smith, 56 N. J. Law, 446. See also Moore *v.* Moore, 41 N. J. Law, 515; Decker *v.* Adams, 12 N. J. Law, 99.

11 2 Blackstone's Comm. 150.

12 Besides these there is the anomalous holding, out of which arises the action for *use and occupation*, to recover in which the plaintiff must prove title in himself, occupancy by the defendant, and facts warranting an inference of intent that the conventional relation of landlord and tenant shall exist. Preston *v.* Hawley, 101 N. Y. 586.

13 Johnson *v.* Johnson, 13 R. I. 457.

the expiration of the term cannot be inferred from a lease not explicit in that respect the statute fixes the expiration as being on the first day of the month of May following.[14] In New Jersey the term endures until the next fixed day for rent-payment.[15] In Delaware the tenancy becomes one for a year.[16] But the New York statute so terminating such holdings on the first day of May does not apply to tenancies from month to month.[17]

**5. End of Term — Tenant Holding Over — Effect — Renewal or Not.**

When a tenant for one or more years holds over after the expiration of his term without express agreement, but with the assent of his landlord, the law implies that he holds the premises upon the former terms as tenant from year to year.[18] When this holding over is without the assent of the landlord the latter has the option to regard the other as either a tenant or a trespasser, whichever he may choose: the tenant himself has no option in the matter.[19] A lease of this kind, held over as stated above, is presumed to be renewed

14 Laws of New York (1896), chap. 547, p. 591, § 202.

15 Gen. Stat. New Jersey, p. 1924, § 37, Act of 1888. And see Albey *v.* Weingart, 71 N. J. Law, 92, 58 Atl. 87; Steffens *v.* Earl, 40 N. J. Law, 128.

16 Laws of Delaware, 1893, chap. 120, § 2, "except of houses and lots usually let for a less time." And see Schmitz *v.* Lanferty, 29 Ind. 400.

17 Gildfoyle *v.* Cahill, 41 N. Y. Supp. 29.

18 Wood *v.* Gordon, 18 N. Y. Supp. 109, and particularly the cases cited there.

19 Park *v.* Castle, 19 How. Pr. 29; 1 Daly, 384; Schuyler *v.* Smith, 51 N. Y. 309; Jackson *v.* Wilsey, 9 Johns. 267; Lesley *v.* Randolph, 4 Rawle, 123; Jackson *v.* Salmon, 4 Taunt. 128; Hall *v.* Meyers, 43 Md. 446; Adams *v.* City of Cohoes, 127 N. Y. 175; Haynes *v.* Aldrich, 133 N. Y. 287.

for a year, but proof is admissible to overcome the presumption.[20] A landlord's consent to his tenant's holding over for a specified time, however, is not tantamount to a lease for another term.[21] When the term is for less than a year, or by the quarter, month, or week indefinitely, by a holding over the tenancy becomes one from quarter to quarter, etc., until ended by a quarterly, monthly, or weekly notice to quit.[22] If the language of a provision in a lease relating to the renewal of the latter is indefinite it is to be given the construction most favorable to the tenant.[23] The formal creation of a tenancy being accomplished by means of a lease we shall proceed to consider what is to be understood by that word.

### 6. Lease — What It Is — Technical Words not Necessary.

A *lease* imports a contract between a lessor and lessee for the possession and profits of land, etc., on the one side and a recompense by rent or other consideration on the other.[24] Technical words are not necessary to give it validity.[25] The apparent intention

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20 Bacon *v.* Brown, 9 Conn. 334.

21 Luger *v.* Goerke, 45 N. Y. Supp. 839.

22 Taylor's Landlord and Tenant (9th ed.), Vol. I, § 57; Hurd *v.* Whitsett, 4 Colo. 77, and cases there cited; Wood *v.* Gordon, 18 N. Y. Supp. 109.

23 Johnson *v.* Railroad Co., 35 Beav. 480; Cardigan *v.* Armitage, 2 Barn. & Cress. 197; Commonwealth *v.* Sheriff (Pa.), 3 Brewst. 537.

24 Allen *v.* Lambden, 2 Md. 279, quoting from Bacon's Abridgment and Archbold's Landlord and Tenant.

25 To establish the relation of landlord and tenant it is not necessary that the words "lease" or "let" or "rent" be used. Any language plainly meaning or implying that the one shall hold from the other is sufficient. Merke *v.* Merke, 113 Ill. App. 518. A lease need not be in any formal words or any technical shape. A letter and the answer to it may combine to create the tenancy even for one under the statute

of the parties is the key to its construction.[26] The chief concern of the lessee under this conveyance is the possession, and this will be given attention later on.[27] Under this conveyance the lessor's main concerns are, first, rent, which he has by way of compensation for the possession he has parted with; and second, the reversion, to which rent is closely related.[28]

**Rent — What It Is.**

*Rent* is defined to be a certain annual profit issuing out of lands and tenements in recompense for the possession. It must be certain; that is, fixed in amount or, if it is to be paid in any form other than money, fixed in value. It must issue annually. It is not meant by this, though, that it is to be paid necessarily just once a year, provided the payments are to be made at fixed and uniform intervals counted

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of frauds. Shaw *v.* Farnsworth, 108 Mass. 357. A lease executed under a mutual mistake of fact may be reformed. Ranalli *v.* Zeppetelli, 94 N. Y. Supp. 561. In a controversy as to whether — under a verbal agreement — a term was for one year or one month, the fact that the tenant was to enjoy possession gratuitously raised a presumption in favor of a yearly term. Schumacher *v.* Waring, 27 N. Y. Supp. 325. A condition in a lease that upon a certain contingency the lease shall be canceled implies that the contingency cancels it *ipso facto*, any further act of the defendant not being needed. Bruder *v.* Geisler, 94 N. Y. Supp. 2.

26 City, etc. *v.* United States Trust Co., 101 N. Y. Supp. 574.

27 See § 65, *post*.

28 Rent grows out of the estate and the enjoyment of it, and it is the privity of estate rather than of contract which connects the reversion with the rent. The contract settles only the amount of rent and the terms of payment. Peck *v.* Northrop, 17 Conn. 217. Rent is incident to the reversion and passes to the grantee of the reversion. Outtoun *v.* Dulin, 72 Md. 540; Winestine *v.* Ziglatzki-Marks Co., 77 Conn. 404, 59 Atl. 496.

in fractions of a year.[29] It must be in return — that is, by way of giving back — for the possession. Finally, it must issue out of the thing possessed:[30] hence the remedy of *distress for rent* in case of default, the owner having recourse to what is to be found on the premises.

### 7. Rent — In What Paid — How Payment Applied.

Except when it has been expressly stipulated otherwise in the lease rent is payable in money only, by which is meant the legal circulating medium: and even if the lessor accepts something in lieu of money — a cheque or a note, for instance — this would be no concession, for his original demand would be good until actual payment.[31] Of course, the honoring or cashing of the paper mentioned would satisfy the demand. The fact of making a *tender* of rent with a failure to accept it immediately does not relieve the tenant of his duty to pay it: the tender must be kept

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29 "Rent is a noun of multitude, meaning not one single sum due at some one moment, which may be recovered by an action and may be lost if not; but meaning a succession of sums of money payable in a general yearly (interval) or at shorter interval during the whole term specified." Chief Baron Kelly in Zouche *v.* Dalbiac, L. R. 10 Exch. 172. See also Richardson *v.* Tangridge, 4 Taunt. 128.

30 Peck *v.* Northrop, 17 Conn. 217. In Newman *v.* Anderson, 5 B. & P. 224, Lord Mansfield said: "It must occur constantly that the value of demised premises is increased by the goods upon the premises, and yet the rent reserved still continues to issue out of the house and land, and not out of the goods."

31 The giving a note does not extinguish the rent, even though received. Sutliff *v.* Atwood, 15 Ohio St. 186. But if the landlord takes the note of a third party and through his own lack of diligence allows the maker to fail without its being paid the lessee is released. Josse *v.* Schultz, 2 Cranch C. C. 579.

good.[32] The payment is to be applied as directed; not, necessarily, in discharge of the instalment longest due.[33] But if it is not indicated to the landlord how the payment is to be applied he has his option in the matter.[34] In case of payment by the assignee of a tenant under whose lease an assignment was forbidden acceptance does not necessarily commit the landlord to a waiver of the prohibition.[35] Rent that becomes due on Sunday or a legal holiday is payable the next following secular day:[36] this does not, however, work any change in the regular intervals of rent days afterward.

**8. Rent — Necessity of Demand — Withholding of Rent.**

In all cases before rent can be held to be in default a demand must have been made for payment.[37] Evic-

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32 A debtor is bound at all times to meet a demand for money that he may have tendered. Town *v.* Trow, 24 Pick. 171; Stow *v.* Russell, 36 Ill. 18. After institution of summary proceedings a tender of rent must include costs in order to be effective. Stover *v.* Chasse, 29 N. Y. Supp. 291.

33 A receipt for rent is *prima facie* evidence that prior rent has been paid. Jenkins *v.* Calvert, 3 Cranch C. C. 216.

34 A receipt for rent is *prima facie* evidence that prior rent has been paid. Jenkins *v.* Calvert, *supra.* Therefore, "When not directed to the contrary effect the landlord may apply payment to the back rent." Collender *v.* Smith, 45 N. Y. Supp. 1130; Hunter *v.* Osterhoudt, 11 Barb. 33; Reed *v.* Ward, 22 Pa. St. 144.

35 Payment extinguishes the demand, no matter who makes it. Baker *v.* Pratt, 15 Ill. 568. By accepting rent from one who has been given — contrary to the covenant in the lease — an assignment of the latter, the landlord does not discharge the lessee as to rent for the rest of his term. Ward *v.* Krall, 46 Mo. App. 447. And see Rector *v.* Deposit Co., 102 Ill. App. 554.

36 Sunday rent is payable on Monday. Craig *v.* Butler, 31 N. Y. Supp. 963. And see Porter *v.* Pierce, 120 N. Y. 221. See also laws on the subject in the several States.

37 Where, as a rule, the tenant has sought the landlord in order to

tion does not exempt a lessee from his obligation to meet the demand for rent due at the time:[38] and when, under the agreement, in a letting for a year the rent is payable in advance and there be a dispossession for good cause the tenant cannot force a return of the money paid.[39] Rent may not be held back by the tenant because of his apprehension lest the landlord will not give him quiet possession.[40] A nuisance which, on the ground of eviction, a tenant might avail himself of to vacate the premises midterm cannot, after occupancy throughout the term by him, be set up by way of counterclaim in an action for rent.[41] The fact that the lease has been made out in the name of the agent of the owner does not entitle any the less the latter to the rent.[42] On death of the owner of fee-simple property the rent of the latter, if under lease, goes to the heir.[43] When security has been given for the

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pay the rent, that fact does not relieve the landlord of the obligation to make a demand upon the tenant before ejecting him. Rea *v.* Eagle Transfer Co., 201 Pa. St. 273, 50 Atl. 764. See also Zinsser *v.* Herrman, 52 N. Y. Supp. 107.

38 Johnson *v.* Barg, 28 N. Y. Supp. 728.

39 Bernstein *v.* Heinemann, 51 N. Y. Supp. 467.

40 Pickett *v.* Ferguson, 45 Ark. 177.

41 Edgerton *v.* Page, 20 N. Y. 281; Borell *v.* Lawton, 90 N. Y. 293.

42 The owner is entitled to the rent, although the lease be made in the name of the agent. Sterret *v.* Flannery, 42 N. Y. Supp. 349.

43 Fay *v.* Halloran, 35 Barb. 295. But rent accrued before the death of the owner is assets in the hands of the executor. Spier *v.* Robinson, 9 How. Pr. 325; Miller *v.* Crawford, 14 N. Y. Supp. 358. The general rule is that an executor has no right to the possession of the testator's real estate unless it is given him by the will. An executor or administrator may sell the real estate for the payment of debts or legacies when the necessity for so doing is made apparent to the Orphans' Court, and an order is made by that court authorizing such sale; but until then he has nothing to do with it. Appeal of Pennsylvania Co., 168 Pa. St. 431. An action by an executor to recover a proportionate part of the rent due at the death of the lessor must be brought against

rent the landlord must return the balance after deducting what is his due.[44]

9. Rent — Payment — Destruction of Premises.

Unless the contrary is provided by statute, or by express words in the lease, partial or total destruction of the rented premises by fire, flood, or other extraordinary cause does not relieve the tenant of the duty to pay rent.[45] However it is a fact that in most of the States a release virtually results by statute in case of destruction by fire, water, tempest, an invading army, or other disaster in any such statute named.[46] To avail himself of such a release, however, the tenant must be careful to vacate the premises.[47] It is also to be borne in mind that a claim must be made as to his right to go, based on the destruction, and that

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the heir or devisee, and not against the tenant. Niles *v.* Chace, 29 Hun, 200.

[44] The surplus over the rent due, of the amount previously deposited with the landlord as security, must, after eviction, be refunded to the tenant. Kahn *v.* Tobias, 37 N. Y. Supp. 632; Scott *v.* Montells, 109 N. Y. 1.

[45] Smith *v.* McLean, 123 Ill. 210; Turner *v.* Mantonya, 27 Ill. App. 500; Nonotuck Silk Co. *v.* Shay, 37 Ill. App. 543.

[46] At common law when the tenant was deprived of the premises through the destruction of them by an invading army, fire, water, tempest, or any other like cause, he was required to pay the rent notwithstanding, unless he had exercised the prudence to have a covenant in his lease exempting him from such duty in case of his being so deprived. Paradine *v.* Jane, Aleyn, 26; Monk *v.* Cooper, 2 Strange, 763; Belfour *v.* Weston, 1 T. R. 310; Hallett *v.* Wylie, 3 Johns. 44. The tenant is relieved from this hardship in New York by statute. See Laws of 1860, chap. 345. Similar laws now exist in most of the States. But where no statute relieves him and he has not relieved himself by a clause in his lease, he must still pay rent notwithstanding the destruction. Smith *v.* McLean, 123 Ill. 210; Turner *v.* Mantonya, 27 Ill. App. 500; Nonotuck Silk Co. *v.* Shay, 37 Ill. App. 593.

[47] Lansing *v.* Thompson, 40 N. Y. Supp. 425.

it must be made within a reasonable time.[48] But rent due on the day of the disaster, whatever it may be, is not released.[49] Where, as mentioned above, statute or the contract makes destruction of the premises a release of rent, a tenant who has paid rent in advance may after the destruction recover back such part of it as was not earned up to the time of the disaster.[50] The statute is not to be stretched in its terms, however, so as to cover troubles or inconveniences to the tenant not plainly within its intention.[51] It is hardly necessary to say that where the tenant is himself under obligation to repair dilapidation of the premises does not release him of the duty to pay rent.[52]

10. **Rent — Landlord's Neglect to Repair — Effect — Notice — Silence.**

Indeed even where the obligation to repair is on the landlord and he defaults in the covenant to such effect the fact cannot be availed of for a defense in an action for rent.[53] Where a tenant, notified that on his holding over the rent will be increased to a specific figure or that some other named change in the old lease will be made, holds over nevertheless it will be taken as an acquiescence in the change.[54]

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48 Copeland *v.* Lutgen, 40 N. Y. Supp. 653.

49 Craig *v.* Butler, 31 N. Y. 345.

50 Porter *v.* Tull, 6 Wash. 408.

51 The statute is not to be extended beyond its purpose and does not enlarge the law of evidence. Huber *v.* Ryan, 65 N. Y. Supp. 135.

52 Crawford *v.* Redding, 28 N. Y. Supp. 733.

53 Drago *v.* Mead, 51 N. Y. Supp. 360; Lewis *v.* Ritoff, 101 N. Y. Supp. 40.

54 Higgins *v.* Halligan, 46 Ill. 173; Marcy *v.* Alexander, 24 Pa. St. 272.

**Rent — Unpaid — Landlord's Remedies.**

Where the premises concerned in the tenancy are of the sort with which we have chiefly to do, within the purpose of this book, the landlord, except as set forth below, has no lien for rent.[55] In some of the States — save by way of dispossession — he has no remedy at all that is not open to every other creditor of the tenant as well; the reference here is to the fact that the remedy by what is called *distress* has been taken away in those States.[56] Elsewhere distress obtains still, it having come down to us with the rest of our law — except in a few respects — as a sort of inheritance from the mother country.[57] This remedy may be

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55 A landlord's lien does not attach to any demised premises not of a crop-producing character.

56 No distress in Montana. Bohne *v.* Dunphy, 1 Mont. 333. Nor in Oklahoma. Smith *v.* Wheeler, 4 Okl. 138. Nor in New York. Hosford *v.* Ballard, 39 N. Y. 47. Nor Minnesota. Dutcher *v.* Culver, 24 Minn. 584. Nor Missouri. Welch *v.* Ashby, 88 Mo. App. 400. Nor North Carolina. Howland *v.* Forlaw, 108 N. C. 567. Nor in Massachusetts. Wait, Appellant, 7 Pick. 105.

57 To entitle a person to distress for nonpayment of money it must be due under a demise and for a rent fixed and certain in nature. Melick *v.* Benedict, 43 N. J. Law, 425. The reason of this is "that the tenant may know, in case he be threatened with a distress, what he is to pay to prevent it, or in case his goods shall be distrained, what sum to tender in order to retain them. Wells *v.* Hornick, 3 Penr. & W. 31. But the necessity that the rent be fixed and certain does not call for the naming of the rent by precise figures in the lease. In Selby *v.* Greaves (L. R. 3 C. P. 594), Willes, J., says: "It is new to me that a rent is uncertain, because it cannot be ascertained at the time of the demise what will become payable at a certain contingency. Such a rent may be clearly distrained for. The maxim *id certum est quod reddi certum potest* applies. A thing is sufficiently certain when it may be made so by an arithmetical process." But the rent or profit, in whatever it consists, whether payable in money, or in produce of land or labor, or in repairs, must be stipulated for by the contract and must be certain or capable of being reduced to a certainty by either party. Valentine *v.* Jackson, 9 Wend. 302; Smith *v.* Colson, 10 Johns.

invoked only where by agreement the rent has been made fixed and certain, irrespectively of the right to distrain being expressly reserved in the lease.[58]

### 11. Distress — Its Nature — What May Be Distrained — Exceptions.

Distress is a formal proceeding whereby, in case a tenant is in default for rent due, payment is exacted out of personal property found on the premises.[59] The right is inseparable from the reversion.[60] It is a *formal* proceeding because certain forms in carrying it out are required by statute, without strict adherence to which the landlord may become a trespasser.[61] As a general principle all movables found on the premises are subject to distress; but in a case before Lord Chief Justice Willes[62] the latter mentioned certain exceptions as follows:

1. Things annexed to the freehold.
2. Things delivered to a person exercising a public

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91. Demise of a grist-mill, the tenant to pay one-third of the tolls for rent. Fry *v.* Jones, 2 Rawle, 11. Demise of marl pit and brick mine, the tenant to pay so much per solid yard for the marl and so much per thousand for the bricks. Daniel *v.* Gracie, 6 Q. B. 145. Demise of a coal yard, the tenant to pay one-half of the profits of the business conducted on the premises. Melick *v.* Benedict, *supra.*

58 Penney *v.* Little, 3 Scam. 301.

59 When the lease contains a covenant whereby the tenant is to pay for the gas consumed on the premises, a sum due for gas so consumed is rent in arrears and may be distrained for. Fernwood Masonic Hall Association *v.* Jones, 102 Pa. St. 307. The same rule would apply when the tenant covenants to pay taxes, water rates, insurance, etc.

60 Prescott *v.* De Forest, 16 Johns. 159; Ragsdale *v.* Estis, 5 Rich. (So. Car.) 429.

61 If, after electing to proceed for his rent by distress under the statute, the landlord legally enters for the purpose but fails to comply thereafter with the statutory requirements he becomes a trespasser *ab initio.* Wyke *v.* Wilson, 173 Pa. St. 12.

62 Simpson *v.* Hartopp, Willes, 512.

trade to be carried, wrought, worked up, or managed in the way of his trade or employ.

3. Cocks or sheaves of corn.

4. Beasts of the plough and instruments of husbandry.

5. The instruments of a man's trade or profession.

The first-named three sorts were absolutely free, and could not be distrained even though there were no other goods on the premises: the last three only *sub modo;* that is, on the supposition that there is sufficient distress besides.[63]

12. Same — Application to the Present Subject.

"Beasts of the plough" in no case certainly would be found on premises such as we are concerned with here; hardly either "instruments of husbandry," unless gardening tools have place in such a category. The instruments of a man's trade or profession, however, are protected now by the laws of the several States exempting certain descriptions of property from seizure in execution, provided they are in actual use.[64] In the same connection there are statutes protecting the books of a professional man.[65]

Distress not Confined to Effects of Actual Tenants.

Generally the goods found on demised premises are susceptible of being distrained without regard to whether they belong to the tenant, an undertenant,[66]

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63 Treiber *v.* Knabe, 12 Md. 491.

64 Ege *v.* Ege, 5 Watts, 135. But only in case they are in actual use, or when there is a sufficiency of other goods on the premises to meet in full the distress. Treiber *v.* Knabe, *supra.*

65 Ege *v.* Ege, 5 Watts, 135.

66 Forty *v.* Imber, 6 East, 435. It was so held also in Page *v.* Middleton (see below) where the circumstances were trying. Here a machine

or a stranger.[67] And, notwithstanding the acts in force in most of the States securing to married women freedom for their separate property from liability for the debts of their husbands, goods on the premises belonging to the tenant's wife are no more protected from distress than those of a subtenant or a stranger.[68]

### 13. Following Distress.

For purposes of distress the landlord is not restricted to goods actually on the premises at the moment, but such as are the property of the tenant and were on the premises he may follow after they have been moved away. Observe, however, the goods *must*

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left with A. on trial was by him — in prospect of his assigning his business to another — deposited with B., who like A. was a tenant of part of the building, and was afterward seized for the assignee's rent. Page *v.* Middleton, 118 Pa. St. 546, 12 Atl. 415. Not so in New Jersey. There a landlord may distrain any of the goods of his, her, or their tenant or tenants and not of any other person, although in possession of such tenant or tenants. Allen *v.* Agnew, 24 N. J. Law, 443.

67 Page *v.* Middleton, *supra*. A piano forte belonging to a stranger, and hired to a music teacher boarding at a public hotel, and found in the hotel and not being in use as an instrument of trade or profession, and there not being a sufficiency of other goods on the premises, is liable to be distrained for rent due by the hotel-keeper. Treiber *v.* Knabe *et al.*, 12 Md. 491. N. B.— The instrument was out of the possession of the music teacher and in the family room of the hotel-keeper where it had remained from November to February. By statute in Pennsylvania (Laws of Pa. 1896, No. 171), pianos, organs, and melodeons hired from their owner and on leased premises are exempt from distress, provided the owner — by himself or his agent — or the hirer gives notice to the lessor. Rohrer *v.* Cunningham, 138 Pa. St. 162.

68 The general rule of law makes all the goods and chattels found on the premises demised subject to distress for the rent thereof even though they be not the tenant's goods. * * * The special law called "The Married Women's Act" of 1848, was evidently not intended to alter this general law of landlord and tenant, and we do not think that it ought to be extended by construction to do so. If this woman had

*have been on the premises.*[69] The goods of a stranger, on the contrary, once removed are inviolate while off the premises.[70] Goods of the undertenant, in order to be distrainable for the principal tenant's rent, must be actually on the premises, such undertenant being in possession at the time.[71] Like the goods of a stranger they may be distrained only while on the premises. It will have been seen, therefore, that goods once on the demised premises that may be followed by the landlord for purposes of distress are those only of the principal tenant.[72]

**Right of Distress — How Affected by Express Liens.**

The owner's statutory right to distrain is superior to an express lien given in the lease, and it may be exercised notwithstanding the latter.[73]

**14. Right of Distress — How Affected by a Judgment.**

Such right of the owner's is not extinguished either by an unsatisfied judgment recovered for the rent.[74]

**Rank of Distress as a Lien.**

The lien of a distress in favor of a landlord is superior to other junior liens, and may be enforced

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not been the wife, but merely a tenant under lease of part of the house, she would have been a *feme sole*, yet her goods would have been liable to distress for the rent. That she, as a wife, is under the control of her husband and that he may endanger her property by a too expensive rent are necessary results of the marriage relation which no course of legislation or jurisprudence can prevent. Blanche *v.* Bradford, 38 Pa. St. 344.

69 Bradley *v.* Pigot, 1 Miss. 348.

70 Slocum *v.* Clark, 2 Hill, 475.

71 Archbold's Landlord and Tenant, 43.

72 Halford *v.* Hatch, Doug. 183.

73 O'Hara *v.* Jones, 46 Ill. 288.

74 O'Hara *v.* Jones, *supra.*

against all but prior lienholders and *bona fide* purchasers without notice.[75] And if the goods of a tenant on the premises are seized under execution or attachment the landlord's lien for his rent — due notice first being given — must be paid out of the property before the seizure may be made to benefit the person for whom it was undertaken.[76] The reason becomes patent here — that is, the advantage distress gives a landlord over other creditors of the tenant — why in some of the States distress has been abolished by statute. The standing of the right of distress after the death of the tenant seems to be involved in doubt. In Illinois it has been held that after such an event it cannot be availed of.[77]

### 15. Reversion — Landlord's Rights in That Respect During the Lease.

The reversion is an estate in expectancy rather than possession — the possession being the tenant's sole estate; therefore, as against the tenant, the only right of the landlord in this connection relates to its being kept unimpaired for his enjoyment after the tenant's possession shall have come to an end. Injury to the premises by the tenant such as to affect the reversion is called *waste*. In the books the word is used mostly

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75 O'Hara *v.* Jones, *supra*.

76 At common law, goods seized in distress were held merely by way of pledge. Statute 2 William and Mary, chap. 5, gave the landlord the right to appraise and sell the property seized. Statute 8 Anne, chap. 14, allowed him — by giving due notice to the sheriff attaching the property in execution — to have a year's rent paid out of the proceeds of sale before the latter could be applied to the satisfaction of the execution creditor. Newell *v.* Clark, 46 N. J. Law, 363; Ege *v.* Ege, 5 Watts, 134.

77 Estate of Kern *v.* Noble, 57 Ill. App. 27.

where the subject in discussion is land, and has reference particularly to wanton destruction of trees, etc.; there may be, however, an injury caused to the building which an owner has erected on his land, as we shall see in the next section. The form of the remedy used by the owner as a rule is *injunction to stay waste;* but in the case of a tenancy at will the landlord may sue in trespass. The reason of this is that, although the action of trespass can be availed of only by one in possession, the injury puts an end to the estate at will and so the possession is restored to the landlord *ipso facto.*[78]

**16. Waste — Doctrine as Applied to City Buildings.**

In general it is no justification for an act of waste that the party doing the injury designed at some future time to restore the property to the condition it was in when the lease was made. The question is whether the tenant when committing the act caused thereby an injury which affected the owner at that particular time in regard to his reversion; for by a lease there is conferred the use of the demised premises — not the dominion. If the tenant exercises an act of ownership he no longer is protected by his tenancy. To illustrate: in a case where, contrary to his obligations as made to appear above, a tenant abused the permission given him to alter the premises, tore down partitions recklessly and otherwise availed himself of his possession to ill-use the property he was held to be guilty of waste.[79]

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[78] Tobey *v.* Webster, 3 Johns. 468.

[79] Agate *v.* Lowenbein, 57 N. Y. 604; Douglass *v.* Wiggins, 1 Johns. Ch. 435; Peer *v.* Wadsworth (N. J. Law), 58 Atl. 378; Maddox *v.* White, 4 Md. 72, 59 Am. Dec. 67; Jungerman *v.* Bovee, 19 Cal. 354.

17. Same — The Injury to the Premises Must Be Serious.

But where the owner's grievance was merely the tenant's attaching a sign to the outside wall it was held that such an act was not calculated to cause irreparable mischief. The sign so attached was in form three balls, and it was insisted these indicated a disreputable avocation and tended to affect injuriously the trade and business of the other tenants and to discredit the house generally for rental purposes. But the court could not see how, in the nature of things, this could be an injury to the reversion, although inconvenience and vexation might, perhaps, be caused by it so far as it affected other tenants. The opinion intimated that any cause of action growing out of the facts accrued to these, rather than the landlord.[80] When the owner has re-entered and is in possession again he may in a proper suit recover for waste against one who, having been his tenant, removed at the end of his term fixtures from the premises.[81]

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But see Fox *v.* Lynch (N. J. Ch.), 64 Atl. 439, where the tenant removed old, wornout, and worthless bar fixtures, to make room for new ones of his own, and they were not to be found afterward so as to be put back at the close of the lease.

[80] Goodell *v.* Lassen, 69 Ill. 145.

[81] An action of trespass may be maintained by a landlord against a tenant at will for waste, because the injury determines the estate, and the possession is considered thereby in the landlord. There must be a possession in fact of the real property to which the injury was done in order to entitle a party to an action of trespass *quare clausum fregit*. Tobey *v.* Webster, 3 Johns. 468. A landlord having consented to his tenant's removing certain shutters from the building and storing them on the premises was not entitled, after the close of the tenancy, to damages for the removal. Cohen *v.* Wittemann, 91 N. Y. Supp. 493. After the tenant's possession ceases he cannot, without the owner's consent, enter and remove any additions made; and if he does so during the tenancy, to the damage of the realty, he is liable. Hart *v.* Hart, 117 Wis. 639; Kelley *v.* Border City Mills, 126 Mass. 148.

**18. Owner's Implied Rights Under the Lease.**

The right to exact rent from the tenant and to have the reversion remain unimpaired adheres to the owner without the aid of any covenant in the lease,[82] although covenants making assurance as to both the one and the other are, in fact, usually included in written instruments of the kind. It will be observed that in such instruments the final stipulation of the lessee is that he at the end of the term will restore the premises to the owner in as good a condition as that he found them in, reasonable wear and tear excepted.[83] It is not expected that these premises, on being restored to the owner, shall be in any better condition than that found by the tenant at the time of the delivery of the possession to him.[84] If he is expected to deliver back no less than he received he is required to deliver back no more.[85] A tenant for years who has so stipulated and has been put to the necessity of realizing the stipulation through the negligence of a third person has an action against the latter.[86]

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82 But not to exact an advance payment of rent. Arcade Realty Co. v. Tunay, 101 N. Y. Supp. 593, citing Goldsmith v. Schroeder, 87 N. Y. Supp. 558.

83 A tenant has, under his covenant to deliver the premises in a good state of repair, until the end of his whole term to carry out the purpose. Fox *v.* Lynch (N. J.), 64 Atl. 439.

84 Middlekauff *v.* Smith, 1 Md. 329; Stultz *v.* Locke, 47 Md. 562; Gutteridge *v.* Munyard, 7 Car. & P. 129.

85 In Fox *v.* Lynch (*supra*), old and absolutely worthless bar fixtures had been replaced by fresh, modern, and serviceable ones of the tenant's. These the landlord claimed the tenant must leave on the premises, since the others could not be restored. In the circumstances the claim was not allowed.

86 Cook *v.* Champlain Tr. Co., 1 Den. 91.

**19. No Warranty as to Condition of Premises Implied from Lease.**

And it is not required of the owner that in giving possession to his tenant the premises shall be in anything like perfect condition. It is for the tenant to see for himself if they are suitable for his needs, since there is no obligation on him to take them if they are not so. On the leasing of a house or lands there is no implied warranty that they shall be fit, the one for occupancy or the other for cultivation. The implied contract relates to the estate only; not to the condition of the property. When a lease contains no express words to the effect that the property is or shall be fit for the purpose for which it is rented there is no implied warranty to that effect: and in case the house falls down in consequence of some inherent defect the lessor is not bound to repair, and yet the lessee will be required to pay rent.[87] As was said in the English case of Robbins *v.* Jones,[88] "Fraud apart, there is no law against letting a tumble-down house, and the tenant's remedy is on his contract, if any."[89]

**20. Same — Rule of Caveat Emptor.**

*Caveat emptor* affects a lessee as well as a grantee. The owner owes the intending lessee no duty to exercise ordinary care to ascertain defects and apprise

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87 Smith *v.* Walsh, 92 Md. 518; Hess *v.* Newcomer, 7 Md. 325; Daly *v.* Wise, 132 N. Y. 306; Franklin *v.* Brown, 118 N. Y. 110; Cole *v.* McKey, 66 Wis. 500; Minneapolis Coöperative Co. *v.* Williamson, 51 Minn. 53, 38 Am. St. Rep. 476, note; Bennett *v.* Sullivan, 100 Me. 118, 60 Atl. 886.

88 Robbins *v.* Jones, 15 C. B. N. S. 240.

89 Smith *v.* Walsh, 92 Md. 518.

him of them.[90] By leasing a dwelling-house the owner implies no warranty that it is reasonably habitable.[91] And in a case where one contracting to take possession on a certain day had failed so to do, owing to there being a mass of timber and rubbish in the building, it was said that his contract held him; none the less so that one he had counted upon as a sublessee had receded from his agreement owing to the untenantability of the premises. The court held that *caveat emptor* applied and that the tenant ought to have arranged for his protection beforehand by contract.[92]

**Tenant's Implied Right — Quiet Enjoyment.**

By the bare fact of taking a lease the tenant obligates himself to pay the landlord rent. On the other hand he enjoys, by virtue of the relation alone and irrespectively of any express contract, the right of quiet enjoyment,[93] although in written leases a covenant to an effect such as this usually finds a place. The discussion of this right will be pursued further on.[94]

**21. Special Covenants.**

It is hardly necessary to say that special covenants will be found in most cases to be for the benefit of the

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90 This does not warrant, of course, the use of deception on the landlord's part in the effort to acquire a tenant. Thus it has been held that the false representation of the owner's agent to the effect that the premises were in good repair, made the owner liable to a tenant who was injured through relying upon them. Meyers *v.* Russell (Mo. App.), 101 S. W. 606.

91 Bennett *v.* Sullivan, *supra;* Doyle *v.* Railroad Co., 149 U. S. 413,

92 Carey *v.* Kreizer, 57 N. Y. Supp. 78.

93 Covenant for quiet enjoyment is the consideration for the promise to pay rent. Vernam *v.* Smith, 15 N. Y. 327; Kitchen Bros. Hotel Co. *v.* Philbin, 2 Nebr. (unofficial) 340, 96 N. W. 487.

94 § 64, post.

party who has the upper hand in the situation: in other words, the party most eager for the contract makes the concessions. As a rule this is not the owner; and we see very frequently, therefore, covenants requiring the tenant to pay water rates,[95] general taxes, insurance premiums, etc.,[96] but for which covenant the possession would go to him not thus burdened.[97] He assumes duties which are those of the landlord and which, so far as they concern others, the owner is not relieved of even then.[98] But where the

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[95] See § 98, *post*, and the note there appropriate to this subject.

[96] Covenant to pay taxes does not contemplate special assessments for public improvements. Realty Co. *v.* Garth, 97 N. Y. Supp. 640. Covenant by the lessee to pay "taxes, rates, charges, assessments, etc.," does not cover the expense of making the premises conform to some statutory requirements. Under a demise for twenty-one years a lessee covenanted to pay the rent reserved and further "to pay and discharge all and all manner of taxes, rates, charges, assessments and impositions whatever then or at any time to be charged, assessed or imposed on the premises thereby demised or in respect thereof or of the said rent as aforesaid, by authority of parliament or otherwise however." During the term the landlord having been called upon to abate a nuisance injurious to health arising from the bad condition of the drains upon the premises, and in order to prevent proceedings against him did such work as was called for in the circumstances. Subsequently it was held by Lord Justice Lindley, upon authority of Tidswell *v.* Whitworth (L. R. 2 C. P. 326), that the payment having been made by the lessor not for a "rate," etc. (quoting the words of the covenant above) but in performance of a duty imposed upon him by act of parliament he was not entitled to have the lessee repay him. Rawlins *v.* Briggs, L. R. 3 C. P. Div. 368.

[97] The obligation to pay taxes cannot be imposed upon the tenant except by express stipulation. Darcey *v.* Steger, 50 N. Y. Supp. 638. So also as to payment of insurance premiums. Hart *v.* Hart, 117 Wis. 639. It might be remarked here that if the tenant has the building insured in his own name and without requirement, equity will regard him as the owner's trustee as to the insurance. Ebert *v.* Fisher, 54 Mich. 294.

[98] See *post*, § 51.

owner finds some difficulty in letting the premises the concessions have to come from him by way of invitation or inducement. Hence often we see leases in which the owner has covenanted to assume duties which otherwise would be the tenant's. In this category is the covenant to repair, as we are to see hereafter.[99] To repeat, special covenants in most cases are made to favor the landlord; however, this is offset somewhat by the disposition of the courts to side with the tenant where possible in construing these covenants.[1]

### 22. Covenant Restricting the Use of the Premises — Similar Condition.

Almost it goes without saying that an owner may discriminate among the uses it is possible for his property to be put to,[2] and so a covenant is not infrequent in conveyances securing the grantor against its being put to specified undesirable uses. This applies, of course, to leases as well as to other conveyances, whether the subject-matter is a house and lot or land that the lessee designs building upon; for in the one case he may have a choice as to what is to be done with the house, and in the other as to what sort of a house is to be erected and for what purpose. It might be remarked here that words in the lease such

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99 In some of the States, however — for instance, California, Georgia, and North Dakota — there is a statutory duty on the landlord to repair. Gately *v.* Campbell, 124 Cal. 520; Purcell *v.* English, 86 Ind. 34; Torreson *v.* Walla, 11 N. Dak. 481.

1 Wall *v.* Hines, 70 Mass. 256.

2 When the mode of occupation is fixed by the lease, or where the purpose of the lease is expressed therein, or when the intention of the parties to confine the leased premises to a special use may be fairly implied from the words of the lease, then the tenant may be enjoined

as "to be occupied as,"[3] etc., in such a connection amount to a condition and not a covenant.[4] The difference is that upon breach of a condition the tenancy is forfeited if the owner so wishes, whereas breach of a covenant merely subjects the tenant to an action in which damages may be given the owner for the breach.

### 23. Same — Tenement and Apartment-Houses.

There has existed here and there always a feeling more or less strong against a *tenement-house,* so called, as being a menace to the prosperity of surrounding real estate in point of value and to the neighborhood in a social way. Covenants against the erection of these houses are not unusual. But restrictions upon building are not aided by the courts through any liberal mode of construction,[5] but enforced in a strict and narrow way. For a time — conceding that the tenement-house of disagreeable notoriety could be called not inaptly "a nuisance," as much so as a stable — these covenants were construed as aimed at them only, even where the word "apartment-house"

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from converting the property to other uses. Reed *v.* Lewis, 74 Ind. 433; Maddox *v.* White, 4 Md. 72; 1 Washb. Real Prop. 546; Steward *v.* Winters, 4 Sandf. Ch. 587.

[3] Maddox *v.* White, *supra.*

[4] White *v.* Naerup, 57 Ill. App. 114. Use of the property in some manner in conflict with the desires of the owner as indicated by the covenant subjects the tenant to forfeiture or injunction, as the owner may prefer. Maddox *v.* White, 4 Md. 72. Whether or not the lease comes to an end by breach of the covenant depends on the option of the owner. Williams *v.* Chemical Engine Co., 63 Atl. 990.

[5] Sonn *v.* Feilberg, 56 N. Y. Supp. 341; White *v.* Building & Construction Co., 81 N. Y. Supp. 434. See also Clark *v.* Jammes, 33 N. Y. Supp. 1020; White *v.* Maynard, 111 Mass. 250.

was employed.[6] Not so now: it has been held in New York that by the year 1886 a distinction between the two had come to be recognized, and that the word "apartment-house," when used in such a covenant, has been used knowingly; so that the covenant must exclude that class of buildings no matter how princely in design and structure.[7]

**24. Covenant to Repair — Rebuilding After Fire.**

At common law it needed no covenant to that effect to impose upon the tenant the duty of repairing the premises demised;[8] so, too, except where some statute provides expressly otherwise,[9] the rule holds good in this country,[10] as we shall see presently.[11] It requires

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6 White *v.* Building & Construction Co., *supra.*

7 McClure *v.* Leaycraft, 90 N. Y. Supp. 233.

8 Lewis *v.* Chisholm, 68 Ga. 40; Purcell *v.* English, 86 Ind. 34; Petz *v.* Voight Brewing Co., 116 Mich. 418; Barron *v.* Liedloff, 95 Minn. 474, 104 N. W. 289. There is no implied covenant requiring the landlord to make repairs. Gluck *v.* Baltimore, 81 Md. 326.

9 The Civil Code of California, § 1941, imposes — in the absence of agreement to the contrary — the duty upon a lessor of a building intended for "the occupation of human beings" to put the demised premises into fit condition; but his default exposes him to no action by the tenant for damages for resulting personal injuries, the sole legal effect of the default being the choice given the tenant, under section 1942, either to repair — deducting the cost from the rent — or to vacate. Gately *v.* Campbell, 124 Cal. 520. So also in North Dakota Rev. Codes N. Dak., §§ 4080, 4081. The rule in Georgia according to statute, as construed in 55 Ga. 180 and 58 Ga. 204, is that it is the duty of the owner, in leasing premises at full price, to have them suitable for the purpose they are taken for — unless the tenant knows as much as the owner as to their condition — and to keep them so accordingly as advised of needs by the tenant. Bosworth *v.* Thomas, 67 Ga. 640; Lewis *v.* Chisholm, 68 Ga. 40.

10 But see Clarke & Stevenson *v.* Gerke (Md.), 65 Atl. 327, where the repairs were made by order of the official inspector of buildings.

11 Witty *v.* Matthews, 52 N. Y. 512.

no argument to show why this should be so; for in order to repair the landlord would have to enter, and without an express reservation in the lease of a right to enter the landlord could not enter, inasmuch as the possession is the tenant's.[12] Indeed, the possession being wholly the tenant's, the landlord, even where he has covenanted to repair, is not called upon to act on the covenant without first having notice from the tenant of the necessity. In the absence of such a covenant the landlord is not required either to rebuild the premises after destruction by fire, etc.[13] But enactments in the several States impose upon the "owner" the duty as to repairs of a certain character where the building is one of several enumerated kinds including tenement and apartment-houses. The reference is to the maintaining of fire-escapes on such buildings[14]— buildings the very *raison d'être* of which suggests numerous human occupancy.

### 25. Maintaining of Fire-Escapes — On Whom Rests the Duty.

In connection with this duty of maintaining fire-escapes on a building of such a kind an important

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12 Barron *v.* Liedloff, 95 Minn. 474, 104 N. W. 289.

13 No obligation rests on either the landlord or tenant to rebuild after destruction of the premises by fire. Smith *v.* Kern, 108 N. Y. 31.

14 "The reparation of a fire-escape would scarcely seem to come within the range of ordinary repairs of a building. It is an attachment to a certain class of tenant-houses which are enumerated in the statute which is erected especially for the protection of the occupants, and a duty is imposed upon the landlord and owner having in view that object. * * * It would be extremely difficult to define the limits of such a duty unless it devolved upon the owner in a tenement-house occupied by a number of persons. If one or more to whom was demised one story should be required to take care of the portion there and the others the remainder, it would be embarrassing to arrange for the

question is, which of the two, the owner of the property or the owner of the business carried on in the building and who rents from the owner for that purpose, is the person intended by the law to perform the duty? Where the building is an apartment-house and has been let to one who as proprietor then sublets the apartments for his own profit, is it the owner of the fee or the proprietor of the house who is to keep the apparatus in repair? It is by no means easy to formulate such an answer as will amount to a rule on the subject, the views of the courts here and there being so much at variance, each construing the statute or ordinance in particular prevailing within its own jurisdiction. At common law no such duty was imposed,[15] and for this reason as well as because of the penal character of such acts the latter have to be rigidly construed.

**26. Same — Construction of Statutes on the Subject.**

To be informed on this subject the inquirer must go to the decisions of the courts of the State with which the facts of the particular case are identified. He need not do this, of course, where the legislative act is entirely specific, as if prepared in anticipation of the mooted point; but few of these acts seem to have been prepared so. The nearest approach to a general rule that might be made is that when the requirement is expressed in a passive form of words, such as "shall be furnished," with no words of agency following so as to indicate by whom, it is safe then to

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whole so as to assure safety and protection to all the occupants." McAlpine *v.* Powell, 70 N. Y. 126.

[15] Pauley *v.* Steam Gauge & Lantern Co., 131 N. Y. 90.

infer the intention to be that the duty is imposed upon the person operating the building and enjoying the benefits of the business use of it, without regard to whether he owns it or merely is the lessee. Where the active form is employed and it is declared that "the owner" shall perform the duty it is left indefinite as to just what the ownership is to which reference is made.

27. **Same — Rule in Pauley v. Steam Gauge & Lantern Co.**

In the above case the Court of Appeals of New York construed a statute of that State which began thus: "It shall be the duty of any owner or agent for owner of any factory, workshop, tenement-house, inn or public-house," etc.[16] The court used the following language: "The plaintiffs in error contend that this phrase means the owner of the building used for the purpose of the factory or workshop, while defendants in error contend that it means the owner of the factory as such, whether he be the owner in fee or not. It has not been claimed that the legislature intended to include both; and we think, although the words used are broad, the intention was to impose the duty required upon one or the other, and not upon both. The reason for this conclusion will appear from a close examination of the statute. The language is not any owner of a building, but *any owner of a factory or workshop.* Hence the solution of the proposition depends on the meaning of the words *factory* and *workshop.*"[17]

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[16] Pauley *v.* Steam Gauge & Lantern Co., *supra.*

[17] "A tenant for years, a tenant for life, and a remainderman in fee is each an owner. So there may be a legal and an equitable estate;

28. Who "Owner" of Apartment-House — Necessity of Special Covenant.

By this it would appear that for the purposes of all such laws the tenant conducting for his own profit the business indicated by the professed character of the place should be regarded as the "owner" for the time.[18] However in the lease between the parties it is well for the owner of the fee to insert a special covenant or condition to insure him as far as possible against the effects of some different holding. Indeed, this remark is not to be confined safely to the maintaining of fire-escapes. For the feeowner of an apartment-house such precaution must be especially needful in case in any respect at all the house fail so to be kept at all times throughout the term that its condition may not come into question justly under the requirements of local law, sanitary and otherwise. Though these laws seem to look at the "owner," etc., in a less equiv-

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the trustee and the *cestui que trust* are both owners. When, therefore, the legislature used a term of such a varied meaning we must presume they intended such an owner as is in possession and occupancy of the premises who has the immediate dominion and control over it and the manner of whose use makes a fire-escape necessary. Had the owner in fee been intended it was easy to have said so." Paxson, J., in Schott *v.* Harvey, 105 Pa. St. 222. See also Harmon, J., in Lee *v.* Kirby, 10 Columbus & Cincinnati Weekly Law Bulletin, p. 449. McAlpine *v.* Powell (70 N. Y. 126) and Wiley *v.* Mulledy (78 N. Y. 310) hardly apply, inasmuch as in each of those cases the owner was the lessor of the apartments and the controversy was as to whether the duty lay on him or the apartment-holder. Opposed to the Pennsylvania doctrine as quoted above, see Arens *v.* Ayer, 192 Ill. 601; Carrigan *v.* Stillwell, 97 Me. 247. See also Johnson *v.* Snow, 102 Mo. App. 233.

[18] Schott *v.* Harvey, 105 Pa. St. 222; Keeley *v.* Hanna, 106 Pa. St. 321; Rogers *v.* Tilley, 20 Barb. 639; Adams *v.* Cumberland Inn Co. (Tenn.), 101 S. W. 428. In McAlpine *v.* Powell (70 N. Y. 126) the case was disposed of on a point aside from where the duty reposed, there having been no fire and the deceased having gone out upon the apparatus for no good reason, being, in fact, a trespasser.

ocal way than do the fire-escape enactments, it is not wise to rely too confidently on how courts may decide in a future case.[19] As a rule, too, a municipality has to look to the landowner, and he is expected to take his own measures for protection as between himself and his tenant.[20]

### 29. Same — Confusion in the New York Tenement-House Act.

The New York "Tenement-House Act"[21] requires the "owner" (See § 105) not only to "cleanse" the premises, as a feeowner naturally would do after putting up the structure, so as to render it inviting to a possible tenant, but to "keep it in a cleanly condition at all times;" something that only the possession would give anybody the right to do otherwise. Yet in another part of the law (See § 143) a distinction is marked pointedly between the owner and the "lessee of the whole house," where a forfeiture of tenancy is made the penalty for subleasing apartments in con-

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19 The provisions of the New York Sanitary Code seem each to be aimed at the individual in closest contact with the thing at the moment such provision becomes applicable. For instance, section 10 declares it to be "the duty of every owner and part owner and person interested, and of every lessee, tenant and occupant of any place, water, ground, room, stall, apartment, building, erection * * * to keep, place and preserve the same * * * in such a manner that it shall not be a nuisance or be dangerous or prejudicial to life or health." "Sanitary Code," adopted by the New York board of health, July 22, 1903, pursuant to Laws of N. Y. (1897), chap. 378 and Laws of N. Y. (1901), chap. 466.

20 See *post*, § 51.

21 See Laws of N. Y. (1901), chap. 344, as amended by Laws of N. Y. (1901), chap. 555; Laws of N. Y. (1902), chap. 352; Laws of N. Y. (1903), chap. 179; Laws of N. Y. (1904), chap. 346; Laws of N. Y. (1904), chap. 739, and Laws of N. Y. (1905), chap. 507.

templation of the use of them by the undertenant for immoral purposes. And in still another part (See § 121), where is mentioned the contingency of the tenement-house being put up by and for some "other person than the owner of the land in fee," the same recognition appears of the possibility of there being at the one time an "owner" and what in this book we call a "proprietor" in respect of the property.

### 30. Nuisance — Upon Whom Lies Duty to Correct, Owner or Proprietor.

The owner of a building, if it is under his control and in his occupancy, is bound — as between himself and the public — to keep it in proper and safe condition so that travelers on the highway shall not suffer injury. It is the duty of such an owner to guard against the danger to which the public is thus exposed, and he is liable for the consequences of having neglected to do so; whether the unsafe condition was caused by himself or another.[22] If, however, the owner is not the occupant he is not bound necessarily.[23] In the case of a private nuisance[24] the common-law rule — which prevails here wherever no statute plainly fixes the duty — is generally this: Where demised property was no nuisance at the time of the demise, but became so by the act of the tenant and during his possession the owner is not liable.[25] So too if the

22 Gray *v.* Boston Gas Light Co., 114 Mass. 149.

23 Lee *v.* McLaughlin, 86 Me. 253.

24 A private nuisance is anything unlawfully or tortiously done to the hurt or annoyance of the person, as well as the lands, tenements, or hereditaments of another. 3 Blackstone's Comm. (Sharswood's ed.) 215.

25 Owings *v.* Jones, 9 Md. 108. Where a person is injured by the tilting of a cellar door in a pavement and it appears that the accident was caused by the door not being effectively closed — rather than by

nuisance came through the use of the premises by the tenant—rather than by his act.[26] One such case would be the sliding of snow off a roof, where it had been allowed by the tenant to accumulate, so as to injure a third person.[27]

31. Same — When Owner Liable.

However the leasing of, and receiving rent for, premises which are a nuisance at the time, or must become so by their user, fixes the owner with liability.[28] Thus, a coal hole in a sidewalk being in a bad state of repair, a pedestrian fell into it accidentally and was injured. The abutting property was under lease at the time and the question was which one, the lessor or the lessee, was liable for the injury. The test was held to be whether, to the knowledge of the lessor, the coal hole was in a bad condition at the time of the change of possession.[29] It should be said in this connection that a tenant himself, injured under circumstances in any way similar, could not hold his landlord for the injury. We have seen already that he, like the grantee of a fee, takes the property as he finds it and the rule of *caveat emptor* applies.[30] That is, this was his own lookout. The possession was not forced upon him; if it was not in all respects what he wanted he was not required to take it. "Let the purchaser beware." In

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there being a defect in its construction — the remedy is against the tenant and not against the landlord. Duffin *v.* Dawson, 211 Pa. St. 593.

26 State *v.* Local Board of Health (N. J.), 52 Atl. 999.

27 Lee *v.* McLaughlin, 86 Me. 253.

28 Rich *v.* Basterfield, 56 E. C. L. 784.

29 Matthews *v.* City of New York, 80 N. Y. Supp. 360.

30 Jaffe *v.* Harteau, 56 N. Y. 398; Lazarus *v.* Parmely, 113 Ill. App. 625.

order to hold the lessor he must show that the latter purposely deceived, or laid a trap for him in transferring the possession of dangerous premises.[31]

**32. Lateral Support — Land not Built upon — Land Built upon.**

Incident to land in its natural state, unburdened with any building, is the right of support from adjoining land; and if by the removal of this support such land sinks or falls away its owner may recover the amount of his damage from the owner of the hitherto supporting land.[32] But the juxtaposition of lands gives to owners no right of support for buildings erected on such lands, unless some grant, conveyance, or statute has so provided.[33] In the absence of any such provision the usual method is this: before proceeding to excavate his lot the person about to do so serves notice of his intention upon the owner of the house and lot adjoining so that he may arrange to secure the safety of his premises by such means as may seem fit.[34] In some of the States, however, as intimated above, he who does the excavating is required by statute to see to it that no harm befalls his neighbor's building.[35]

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31 But the landlord is not required to disclose to the tenant a hidden defect discovered by himself only since the letting of the premises. Shute *v.* Bills, 191 Mass. 433; 98 N. E. 96.

32 McGuire *v.* Grant, 25 N. J. Law, 356; Thurston *v.* Hancock, 12 Mass. 220; Lasala *v.* Holbrook, 4 Paige, 172; Richardson *v.* Railroad Co., 26 Vt. 465; North. Transp. Co. *v.* Chicago, 99 U. S. 635.

33 Schultz *v.* Byers, 53 N. J. Law, 442; 2 Rolle's Abr. title "Trespass," I, pl. 1.

34 Schafer *v.* Wilson, 45 Md. 268; Larson *v.* Street Ry. Co., 110 Mo. 234; Schultz *v.* Byers, 53 N. J. Law, 442. And see Bonaparte *v.* Wiseman, 89 Md. 12.

35 Laws of N. Y. (1882), chap. 410, § 474.

33. Same — Application of Rule as to Repairs — Common Law.

Where — as in the States where the common-law rule prevails — one is left to guard the safety of his own building, and that building is in the possession of a lessee who has covenanted with the lessor to repair, such lessee cannot charge his lessor for injuries to the walls of the house let caused by such excavation, even though these injuries necessitated his removal before the expiration of the term.[36] And he could not, probably, even without such a covenant, since merely by becoming a lessee one assumes the duty to repair.[37]

Same — Same — Modification of Common Law.

In New York, where statute imposes upon the owner of the lot about to be excavated the duty of protecting adjacent property belonging to others, an owner in the latter class assumes no liability to his tenant by giving such excavating lotowner, or his agents, license to enter the demised premises in order to arrange for their safety: and this is so even though, after all, the arrangements made happen to result to the tenant's injury.[38]

34. Tenant Repairing and Charging Expense to Landlord.

Since the owner is under no obligation otherwise to keep the demised premises in repair the tenant, if he would have him so obligated, must fix the duty upon him by contract.[39] It hardly need be said that without

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[36] Serio *v.* Murphy *et al.*, 99 Md. 545, 58 Atl. 435.

[37] But see *ante*, note 99.

[38] McKenzie *v.* Hatton, 24 N. Y. Supp. 88.

[39] Smith *v.* State, use of Walsh, 92 Md. 518; Pitz *v.* Voigt, 116 Mich. 418; Taylor's Landlord and Tenant, § 175.

having done this the tenant cannot, when such premises are out of repair, make the repairs himself and charge the landlord with the expense.[40]

**Landlord's Covenant to Repair — Conditions Precedent — Breach — Damages.**

In the above connection it might be remarked, in the first place, that when the owner agrees that before the tenant goes into possession he will improve the premises his carrying out of the agreement is a condition precedent.[41] When, therefore, an owner before the beginning of the term covenants with his tenant — whose business is to be the subletting of rooms in the demised building as living apartments — that he will repair the premises, his subsequent failure to do this renders him liable to the tenant for the rental value of the apartments during the time they remain unoccupied, owing to such failure.[42]

**35. Same — Condition Subsequent.**

But an agreement by the landlord to repair made after the execution of the lease is without consideration and incapable of being enforced.[43] The lack of consideration appears from there being no inducement for the owner to gratify the tenant, the letting now having been accomplished. Such would be a *condition subsequent* and is one that rests, for its performance,

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40 Hart *v.* Hart, 17 Wis. 639.

41 Kiernan *v.* Germain, 61 Wis. 498; Strohecker *v.* Baldwin, 21 Ga. 430. But not where an improvement was to be made after the taking possession. Doolittle *v.* Selkirk, 28 N. Y. Supp. 43.

42 Daly *v.* Piza, 90 N. Y. Supp. 1071.

43 Hall *v.* Beston, 49 N. Y. Supp. 811; Johnson *v.* Witte (Tex. Civ. App.), 32 S. W. 426.

only on the disposition of the maker.[44] It might be said that no promise ought to be made which the maker does not intend to perform; but it is here not a question of ethics but of law, and in contract law there must be a *quid pro quo*. A *nudum pactum* is not susceptible of being enforced.[45]

**Owner Must Be Given Notice of Defect.**

In order to charge an owner on an agreement to repair one of three things must be shown; either that he was given timely notice of the need for the repairing, or that he was aware of that need without having to be told, or that by previous agreement he had dispensed with the requirement to be notified.[46]

**36. Same — Indifference to Notice Given No Indication of Fraud.**

And if, on being so notified, the owner makes light of the defect and does nothing to correct it, insisting the safety of the premises is not affected, which idea the event negatives so that the tenant suffers injury by reason of there being no repairs made, the owner is not liable on the ground of fraud in his representa-

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44 But in a case where during the occupancy the landlord agreed that for the rest of the term a reduced rent be charged, and no consideration appeared in the agreement; and the landlord sought to avail himself of the omission so as to recover full original rent, the tenant was allowed to show that the promise of reduction was in consideration of his promise to alter and add to the premises. Natelsohn *v.* Reich, 99 N. Y. Supp. 327. The promise might be binding too where it was induced by a tenant's threat to leave the premises. See Bennet *v.* Sullivan, 100 Me. 118, 60 Atl. 806.

45 Purcell *v.* English, 86 Ind. 34; Woodfall's Landlord and Tenant, § 382.

46 Cummings *v.* Ayer, 188 Mass. 292, 74 N. E. 336.

tions; unless it is made to appear that he did not believe the premises were safe while insisting they were, and that it was his intention to deceive.[47]

**No Implication Beyond Words of the Covenant.**

Inasmuch as a covenant to repair is not implied by law an express covenant to that effect will not be enlarged by construction. Rather the parties will be held, in the absence of fraud or mistake, to have expressed themselves to the utmost of what they intended or had in their minds as to the extent to which it was to go.[48]

**37. Remedies of Tenant for Breach of Covenant to Repair.**

If a landlord defaults in his covenant to repair he is not exposed to an action of tort in consequence at suit of the tenant, the matter being one of contract only.[49] Again, covenants to repair and covenants to pay rent are independent of each other; hence the tenant may not elect to surrender the premises and terminate the lease for failure of the landlord to keep his covenant.[50] His remedy is to have the repairs made himself and hold the expense as a counterclaim for rent.

**Covenants — Undesirable Subtenants — Undesirable Use — Waiver.**

In a lease of one of these apartment-houses it would be absurd to look for a general covenant against sub-

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47 Kushes *v.* Ginsburg, 91 N. Y. Supp. 216.

48 Witty *v.* Mathews, 52 N. Y. 512.

49 Kushes *v.* Ginsburg, 91 N. Y. Supp. 216; Boden *v.* Scholtz, 91 N. Y. Supp. 437; Schick *v.* Fleishauer, 49 N. Y. Supp. 962; Frank *v.* Mandel, 78 N. Y. Supp. 855; Goldberg *v.* Besdine, 78 N. Y. Supp. 716; Goluback *v.* Almodo, 80 N. Y. Supp. 1136; Stelz *v.* Van Dusen, 87 N. Y. Supp. 716; Golob *v.* Pasiusky, 178 N. Y. 458.

50 Huber *v.* Ryan, 56 N. Y. Supp. 186.

letting. Unless in order to discriminate among possible subtenants for the safety or credit of the premises any such covenant here hardly would be suggested. Covenants are inserted, though, in form like this: "Not to put said premises to, or sublet them for, or allow them to be put to any use," etc., specifying: as, for instance, one deemed extrahazardous on account of fire.[51] Apropos of this, allowing continued possession after the breach of such a covenant does not waive the latter, but the tenant is liable to the landlord for the increased insurance rates.[52]

### 38. Covenants Against Assigning — Waiver — Taking Rent from Assignee.

It is often said that the taking of rent by the landlord from one to whom the tenant has assigned works a waiver of any forfeiture, dependent on such assigning, exacted by the lease, and *ipso facto* makes the assignee his accepted tenant.[53] But this should be qualified. When the covenant is express the tenant under the demise is not released;[54] he does not escape the duty of paying rent unless the landlord accepts the

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51 Roniane *v.* Simpson, 84 N. Y. Supp. 875.

52 Roniane *v.* Simpson, *supra*.

53 Garcewich *v.* Woods, 73 N. Y. Supp. 154; Murray *v.* Harway, 56 N. Y. 337.

54 One who enters into an express covenant remains bound by it though the lease be assigned over, while such covenants as are implied are coextensive only with the occupation of the premises — the lessee, for instance, not being liable under his implied covenant for rent after his assignment to another and the acceptance of rent by the lessor from the assignee." 1 Washburn on Real Prop. (4th ed.), § 493. And see Mills *v.* Auriol, Smith's L. C. (6th ed.) 1116; Hunt *v.* Gardner, 39 N. J. Law, 530; Sutcliff *v.* Atwood, 15 Ohio St. 194. Lessee is still held, even in cases where owner accepts rent from assignee. Kunkle *v.* Wynick, 1 Dall. 305.

substitution otherwise than by implication — from the bare fact, for instance, of taking rent from the assignee.[55] Indeed, it is generally held that after such taking rent from the assignee the assigning tenant may still be looked to for rent during the remainder of the term, he not being discharged.[56] But, if by assigning the tenant has been guilty of a breach of condition,[57] it is within the landlord's option either to accept the assignee as his tenant or to regard the assignment as a surrender. And, of course, he need not do either; but, as we have seen above, may hold the original tenant still under the lease.[58]

**39. Surrender — Feasibility in Case of an Apartment-House.**

Where the premises consist of an entire apartment-house or tenement-house a surrender could not be consummated very easily, in the nature of things; inasmuch as a sublessee's estate may not be curtailed by any subsequent agreement between the lessor and lessee in which the sublessee has not concurred.[59] This

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55 By assigning his lease one does not escape the duty of paying rent unless the landlord accepts the substitution. Rector *v.* Deposit Co., 102 Ill. App. 554. The taking of rent from an assignee does not necessarily show that the landlord has accepted such substitution. Rector *v.* Deposit Co., *supra.*

56 See Ward *v.* Krall, in note 35, *ante* (§ 7).

57 To create a good condition upon which a term granted in a lease should end before it expires by lapse of time a right to re-enter on breach must be expressly reserved. Vanatta *v.* Brewer, 32 N. J. Eq. 268. An expressed power of re-entry by landlord contingent upon breach of tenant's covenant not to assign works a condition. Kew *v.* Trainor, 150 Ill. 150.

58 Starkie on Evidence, § 1518; Barhyd *v.* Burgess, 46 Iowa, 476; Taylor *v.* De Bus, 31 Ohio St. 468.

59 A sublessée's estate may not be curtailed by any subsequent agreement between the principal parties — lessor and lessee — in which the

is said, of course, on the assumption that the apartments have been taken to any extent. Too many people would have to be consulted. A surrender would require the consent of each apartment-holder, and would carry with it then the cancellation of all the subleases.[60] This question will be taken up again farther on, when we have the relation of Proprietor and Apartment-Holder under consideration. We shall defer until then also the discussing of the close of the relation of Landlord and Tenant so far as the same is accomplished otherwise than by lapse of time.[61] Instances of a forcible severance of relations between the owner and the lessee of the whole house must be rare, compared to such between the latter and apartment-holders.

**40. Close of the Relation — Lapse of Time — Fixed Term.** When the term of the lease is a fixed one,[62] so that the day on which it is to end may be gathered plainly from the agreement, the relation ends on that day with-

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sublessee has not concurred. Weiss *v.* Mendelson, 53 N. Y. Supp. 803; Eten *v.* Luyster, 60 N. Y. 252.

60 But it will be understood, of course, that if the principal lease is canceled by reason of some express stipulation contained in it, the sublease is canceled *ipso facto*, inasmuch as a lessee's estate cannot be greater than his lessor's. Bove *v.* Cappala, 91 N. Y. Supp. 8; Bruder *v.* Geisler, 94 N. Y. Supp. 2.

61 See Book II, § 76.

62 A lease provided that in case of destruction of the premises by fire, notice whereof should be given immediately to the owner by the lessee, the owner would cause the damage to be repaired "forthwith." Such a provision, if carried out, would have deprived the tenant of the benefit of the statute (N. Y. Laws, 1860, chap. 345). But it was held that "forthwith" means within a reasonable time, and that a delay by the owner of nine days after the notice before beginning the repairs was unreasonable and that the tenant might remove without regard to the term fixed by the lease. Nimmo *v.* Harway, 50 N. Y. Supp. 686.

out previous notice.[63] Yet there are some little technicalities to be on one's guard about here.[64] In such agreement if the word "from" appears, in expressing the day of the inception of the term, the end will fall on the same day of the same month recurring in the future — accordingly as the number of years of the term may be in a lease for years, or on the same day of some month in the future — accordingly as the number of months of the term may be in a lease for less than a year. But if the inception of the term is indicated by the words "beginning on" the end will not be on a like day recurring, as in the other case, but the day last preceding that day.[65] It is important to keep this rule in mind, lest a tenant overstay his term through ignorance and be held to a new one against his will.[66] A tenant may overstay his term by mis-

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63 Messenger *v.* Armstrong, 1 T. R. 54; Cobb *v.* Stokes, 8 East, 358; Ellis *v.* Paige, 1 Pick. 43; Danforth *v.* Sargeant, 14 Mass. 491; Clapp *v.* Paine, 18 Me. 268; 4 Kent's Comm. 114; Archbold's Landlord and Tenant, § 86; Burns's Annot. Stat. (Ind.) 1901, § 7094. To eject a tenant who has held over it does not matter that the landlord gave no notice until after the term — or, indeed, that he gave no notice at all — for he is a trespasser. Livingston *v.* Tanner, 12 Barb. 14.

64 Currier *v.* Barker, 2 Gray (68 Mass.), 224.

65 Higgins *v.* Halligan, 46 Ill. 173; Buchanan *v.* Whitman, 27 N. Y. Supp. 604.

66 Ackley *v.* Westervelt, 86 N. Y. 448. But a holding over by the tenant for a time specified, the owner consenting, does not imply a lease for another term. Luger *v.* Goerke, 45 N. Y. Supp. 839. And see Herter *v.* Mullen, 159 N. Y. 28. In this case the tenant had given reasonable notice and had moved off all his furniture possible, considering that his mother was dangerously ill in one room and could not be moved until fifteen days after the end of the term. The decision was — by a divided court — for the tenant. A dissenting opinion was delivered by Vann, J., and seems to contain better law than the prevailing one. Concisely, the theory of the dissentients was that if a man is disposed to escape a legal obligation by reason of an emergency he should have provided therefor previously by contract. The citations, be-

fortune also, and although it has been held that the law will relieve him the better view is that it will not.[67]

### 41. Notice to Quit.

At common law, in case of a term from year to year, it was necessary to give a notice of six months—unless otherwise provided in the lease—to a tenant who was desired to vacate at the end of the term;[68] that is, six months counting back from the last day of the term.[69] But in this country, as a rule, only three months' notice is required;[70] except in States where a tenant's holding over makes his tenancy thereafter, by virtue of statute, one for a year certain from the end of the term created by the lease,[71] provided the landlord has not elected to treat him as a trespasser and eject him.[72]

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sides New York ones, were: Cloth Co. *v.* Gardner, 99 Ill. 151; Moore *v.* Beasley, 3 Ohio, 294; Vrooman *v.* McKaig, 4 Md. 450; Hemphill *v.* Flynn, 2 Pa. St. 144; Wolff *v.* Wolff, 69 Ala. 549.

67 A tenant is not relieved of liability for holding over because it was unavoidable. Regan *v.* Fosdick, 42 N. Y. Supp. 471; Haynes *v.* Aldrich, 133 N. Y. 287. But see Herter *v.* Mullen, 159 N. Y. 28. An order of the health department forbidding removal affords a tenant the privilege of holding over, in the case of sickness in the house, without incurring penalty. Regan *v.* Fosdick, 43 N. Y. Supp. 1102. The penalty under N. Y. Laws (2 Rev. Stat., p. 1219, § 10) applies only to indefinite terms. Regan *v.* Fosdick, *supra.*

68 Burn *v.* Rawlins, 10 East, 261; Strickland *v.* Spence, 6 East, 120; Barlow *v.* Wainwright, 22 Vt. 88; Hall *v.* Meyers, 43 Md. 446.

69 Dumm *v.* Rothermel, 112 Pa. St. 272; Phœnixville *v.* Walters, 147 Pa. St. 501; Unsher *v.* Moss, 50 Miss. 208; Prickett *v.* Ritter, 16 Ill. 96.

70 Phœnixville *v.* Walters, *supra;* Currier *v.* Perley, 24 N. Y. 219.

71 Haynes *v.* Aldrich, 133 N. Y. 287; Adams *v.* City of Cohoes, 127 N. Y. 175.

72 If a tenant for one year holds over the landlord must elect whether to accept him as a tenant for a new term or treat him as a trespasser. Goldberg *v.* Mittler, 50 N. Y. Supp. 733.

Where the lesser tenancies are concerned the time covered by the notice should conform to the intervals between rent days, counting back, of course, from one of them,[73] but in tenancies from month to month a month's notice is required.[74] If after notice to quit the old relation between the parties continues, contrary to the notice, for a reasonable time and neither objects meanwhile the legal situation remains as though no notice had been given.[75]

### 42. Lease of Tenement-House — Determination for Allowing Improper Use.

By virtue of section 143 of the New York "Tenement-House Act" the lease of a house so indicated, demised as a whole by the owner, may be terminated at the latter's option if the lessee allows such house, or any part of it, to be used for purposes of prostitution or assignation. What is more, the law in effect obliges him to exercise this option, since otherwise he

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73 "When the term is for a shorter period than a year, according to the current of authorities, both English and American, the holding over is implied to be for a like term, and the notice to quit is determined thereby, and is sufficient if it equal the length of the term or the intervals between the times of payment of rent." Hurd *v.* Whitsett, 4 Colo. 77, citing Taylor's Landlord and Tenant, § 478; Tyler's Ejectment and Adverse Enjoyment, 243; 1 Washb. Real Prop. 610; 1 Greenl. Cruise, 269, note 2; Noel *v.* McCrary, 7 Caldw. 627; Schuyler *v.* Smith, 51 N. Y. 309; Wood *v.* Gordon, 18 N. Y. Supp. 109.

74 "Where a tenant for a term less than one year holds over, or where the letting is by the quarter, month or week indefinitely, and not as for an aliquot part of the year, the tenancy is from quarter to quarter, or month to month, etc., until a notice to quit proportionate to such holding is given." 1 Taylor's Landlord and Tenant (9th ed.), § 57, citing Anderson *v.* Prindle, 23 Wend. 616; People *v.* Botsford, 47 N. Y. 666; Skaggs *v.* Elkus, 45 Cal. 154; Hollis *v.* Burns, 100 Pa. St. 206; Rothschild *v.* Williamson, 83 Ind. 387.

75 Channel *v.* Merrifield, 106 Ill. App. 242.

would be permitting the improper use himself; for which permission on his part section 142 of the same act imposes upon him a penalty of one thousand dollars which becomes a lien on the house and lot.

**Renewal of Lease — General Rule of Construction.**

In construing provisions in a lease relating to renewals the tenant is favored if there is uncertainty: because the landlord, having the power to stipulate in his own favor, had neglected to do so, and also because a man's grant is to be taken most strongly against himself.[76] But where a lease provided that the term was to be for a year "with the privilege of longer" the agreement was held to be too indefinite to be enforced.[77] A covenant for renewal, if not specific as to what the rent shall be, carries the implication that the renewal is to be at the old rent.[78]

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[76] Kauffman *v.* Liggett, 209 Pa. St. 807.
[77] Howard *v.* Tomicich, 81 Miss. 703, 33 So. 493.
[78] Ryco *v.* Riecke, 81 N. Y. Supp. 1093.

## CHAPTER TWO.

### OWNER AND APARTMENT-HOLDER.

**43. Owner and Apartment-Holder — What Is the Relation.**

There is no privity between an owner and a sublessee, and so their rights, so far as the latter is concerned, stand or fall with those of the principal tenant under his original agreement with the owner; and, whether or not expressly so stated therein, the subleases are made subject to the agreement mentioned.[79] It will be seen, therefore, that the estate of the apartment-holder cannot be greater than that of his lessor, the proprietor of the house, who is the owner's lessee: and in case of the termination of the latter's estate either by lapse of time or condition broken the apartment-holder's estate comes to an end immediately.[80]

**Act of Lessee May Terminate Principal Lease.**

But it is possible for the sublessee to curtail his particular lessor's estate. So, where a tenant at will had sublet the premises and the sublessee had committed waste, the owner — since the injury determined the tenancy — was given the possession. But the owner, having now the possession without which no one may

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79 Peer *v.* Wadsworth, 67 N. J. Eq. 191, 58 Atl. 379.

80 The clause in the lease, reciting: "In case of any default by the tenant in any of the covenants herein said landlord to have the right to collect rents from the subtenants and this lease shall then be canceled," gives the landlord the option of declaring the lease canceled if default on the part of the tenant occurs, and does not give the tenant the right by making a default to assert then that the lease is canceled. O'Brien *v.* Levine, 98 N. Y. Supp. 636.

sue in trespass, had a right of action against the sublessee in trespass *quare clausum fregit*.[81]

### 44. Appropriation by Owner of Sublessee's Rent in Payment of That of Lessee.

It has been said that a general equity exists in the owner to be paid from rents derived from the apartment-holder in the hands of the receiver of the latter's lessor,[82] here called the proprietor. That equity is obvious. Rent reserved to the landlord must be paid as a condition of its further receipt from an undertenant. It is, therefore, to the interest of the sublessee himself that his rent should go to the owner, as otherwise his lease must fall with that of his lessor through breach of the latter's condition in the principal lease with the owner. How this affects the other creditors of the principal tenant is another question.

### Distress for Rent.

We have seen that, in those States where, in case of default in paying rent, a landlord has the right to levy a distress upon personal property found on the premises, when any of such property happens to belong to the undertenant it is subject to the distress, provided there cannot be found on the premises effects of the principal tenant sufficient to make good the demand.[84]

### 45. Destruction of the Premises by the Elements.

At common law, as has been observed already, destruction of the premises by fire, etc., did not relieve

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81 Tobey *v.* Webster, 3 Johns. 268.

82 Levy *v.* Trimble, 74 N. Y. Supp. 2; Bova *v.* Coppala, 91 N. Y. Supp. 8; Bruder *v.* Geisler, 94 N. Y. Supp. 2.

83 Stillman *v.* Van Beuren, 100 N. Y. 441.

84 See *ante*, § 12.

the tenant of the duty of paying rent, unless he prudently had included in his lease a provision to that effect; and the reason was that the land demised was the important part of the premises: which land, of course, was not destroyed.[85] But the renting of merely an apartment in a house, it has been held, does not vest in the tenant the land the house stands on; so that, irrespectively of any statute relieving tenants of the harshness of the common law in this regard,[86] the apartment-holder would escape the duty, in case the fire rendered uninhabitable the apartment.[87] Because what now has been destroyed was all he ever undertook to pay rent for. In such case, however, he must move out in order to have himself relieved of the duty.[88]

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85 McMillan *v.* Solomon, 42 Ala. 356.

86 Lansing *v.* Thompson, 40 N. Y. Supp. 425.

87 Alexander *v.* Dorsey, 12 Ga. 12; Pape *v.* Garrard, 39 Ga. 471.

88 Tallman *v.* Murphy, 120 N. Y. 345.

## CHAPTER THREE.

### OWNER AND THIRD PERSONS.

**46. Municipality — Powers over Private Property — Common Safety.**

In the interest of the community the municipal government may exert a power over private property within the limits of its local control to the extent, in extreme cases, even of destroying it, if in such cases a menace to safety or health is involved.[89] At common law not only the municipality, but even an individual might destroy real and personal property, where it seemed necessary to do so in order to prevent the spread of fire; and there was no responsibility on such individual as the result of his act and no remedy for the owner of the property destroyed. In the case of "The Prerogative"[90] it was said: "For the commonwealth a man shall suffer damage; as, for saving a city or town, a house shall be plucked down if the next one be on fire: and a thing for the commonwealth every man may do without being liable to an action. There are many other cases besides that of fire, some of them including life itself, where the same rule applies. The rights of necessity are a part of the law."[91]

**47. Same — In Connection of Combatting Fire.**

Buildings owned by private persons frequently are demolished in the effort to check the advance of flames

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89 City of Salem *v.* Eastern Railroad Co., 98 Mass. 431.

90 12 Reports (Coke), 13.

91 Bowditch *v.* City of Boston, 101 U. S. 16.

during some grave conflagration; and, so far from this being considered a wrong, it was said once of a statute passed to compensate owners in such a case: "The statute of Massachusetts, as far as it goes, gives as a bounty that which could not have been claimed before."[92]

**Same — Interest of Health — Constitutional Law.**

The provision in the Constitution of the United States looking to protection of the life, liberty, and property of an individual does not negative the common-law rule, even though resort to the right arising out of the latter may seem at times to work to the injury of private ownership. In "The License Cases"[93] it was said by McLean, J.: "The acknowledged police power of a State often extends to the destruction of property. A nuisance may be abated. Everything prejudicial to the health or morals of a city may be removed." And he quoted the language of a State court in support of the doctrine.

**48. Same — The Law as Recognized in New York.**

In the case referred to by Justice McLean,[94] it was said: "There are many examples of summary proceedings which were recognized as due process of law at the date of the Constitution, and to these the prohibition has no application. In Meeker v. Van Rensselaer[95] the court justified the act of the defendant in tearing down a filthy tenement-house which was a nuisance, to prevent the spread of Asiatic cholera."[96]

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92 Bowditch *v.* City of Boston, *supra.*

93 5 How. (46 U. S.) 589.

94 Rockwell *v.* Nearing, 35 N. Y. 308.

95 Meeker *v.* Rensselaer, 15 Wend. 397.

96 *Compare* Lawton *v.* Steele, 119 N. Y. 226.

**Same — Interest of Morality — Remedy not so Radical.**

Where the peril to be met affects merely morals the exercise of the municipal power needs not to be so radical. If, as in the case of the building in Meeker v. Van Rensselaer, the thing is a nuisance *per se* its abatement can be managed only by putting an end to its existence; just as in the case of burning obscene books. "But when a bawdy-house is concerned the nuisance is not the thing itself, but the use to which it is put: hence the destruction of the building for the abating of the nuisance would have no sanction in common law or precedent, as a sufficient remedy would be found in stopping the use."[97]

**49. Same — Powers of a Municipal Department.**

Since private persons have had of old such dominion, for the public good, over the property of others there should be no complaint if some appropriate department of the municipality should exercise like dominion at first hand.[98] A well-filled tenement-house is in itself a community, to all intents and purposes, but the inmates — unlike those of a lodging-house or the guests of a hotel — are, outside of the law, under no common control. Under the New York "Tenement-House Act" such a building cannot be put to its intended use until a certificate to the effect that it is fit for the purpose shall have been given by the proper authority to the proprietor.[99] If it is sought to operate the building in disregard of this regulation the legal consequences are made to affect not the proprietor

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[97] Lawton *v.* Steele, *supra.* And see § 42 *supra.*

[98] City of Salem *v.* Eastern Railroad Co., 98 Mass. 431.

[99] Tenement-House Act, § 122.

only, but the owner; and that not only in a personal way, but in a way to embarrass the property itself. And this concerns not only the beginning of the operating, but the subsequent maintaining the house with strict regard to health and morality.[1]

**50. Same — Summary Powers of Boards of Health.**

Boards of health are clothed with extraordinary powers for the protection of the community from noxious influences affecting life and health, and it is important that their proceedings shall be embarrassed as little as possible by a very rigid observance of formalities.[2] Although notice and opportunity to be heard upon matters affecting private interests ought to be given when practicable, yet the nature and object of these proceedings are such that it is deemed to be most for the general good that such notice should not be essential to the right of the board of health to act for the public safety.[3] The board of health may, without notice to the property-owner,[4] direct a tenement-house to be vacated because of its sanitary condition, and may prohibit the further use of it as a human habitation without a permit from the board.[5] The burdening of an owner with the expense of altering his premises so as to make them conform

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1 Tenement-House Act, § 126.

2 All the rights and powers possessed by the New York health department, so far as the same concern the inspection, etc., of tenement-houses, have been conferred upon the tenement-house department. See Charter of Greater New York, § 1340.

3 City of Salem *v.* Railroad Co., *supra*.

4 But see § 166, *post*.

5 Eagan *v.* Health Department, 45 N. Y. Supp. 325. The owner may, however, demand a survey as in cases of condemnation. Eagan *v.* Health Department, *supra*.

to the requirements of a statute passed in furtherance of health does not deprive him of his property without due process of law.[6]

### 51. Owner's Duties to Municipality.

An owner's duties to the municipality cannot be shifted by his tenant's covenant to assume them, such a covenant only giving him the right to indemnify himself in an action against the tenant.[7] The ordinary duties relating to payment of taxes, water rates, etc., will occur to the mind here without particular attention being called to them; but there are extraordinary ones imposed by statute expressly, but for which no duty would exist.[8] For instance, the municipality hav-

6 Health Department *v.* Rector, etc., 145 N. Y. 32.

7 Kalman *v.* Cox, 92 N. Y. Supp. 816.

8 Plaintiff demised the building to defendant for a term of twenty-one years by a lease containing a covenant that throughout the term the lessee was to "pay all the existing and future taxes, sewer rates, and rates, assessments and outgoings of every description for the time being, payable by the landlord or tenant in respect of the demised premises." The lessee used the premises for his business, in connection with other adjoining buildings in his occupancy, whereby the demised premises took on the character making them subject to an act of parliament subsequently passed. This act required all such property to be furnished with a proper means of escape in case of fire. It provided also that the obligation was on the owner in the first instance, and gave him recourse to the County Court to have it determined afterward whether "under all the circumstances of the case" the lessee ought not reimburse him for the expense. There was served on the owner in due form an authoritative order, in conformity to this act, which order was obeyed at a great expense to the owner and the latter then sued the lessee for the amount, instead of going first to the County Court, relying on the covenant above set out. It was held that the suit was premature inasmuch as the plaintiff should have gone first to the County Court, the covenant mentioned being one of "the circumstances of the case," but the court intimated that the words of the covenant insured his indemnity so soon as the omitted form was complied with. Horner *v.* Franklin, L. R. K. B. D. (1905), Vol. I, p. 479.

ing control of the streets and sidewalks within its local limits may, by appropriate enactments, impose upon lotowners the burden of keeping in reasonably safe repair the walks in front of their premises, and enforce such enactments by means of special tax bills, or penalties, in case of failure to perform the duties so imposed.[9] And the duty of keeping sidewalks free of snow and ice may be enforced in the same way.[10]

### 52. Police Powers — To What They Extend.

So, too, by what are called "police powers" the municipality may make requirements of, and place restrictions upon owners in respect of such premises in the interest of public morals, health, and safety. It may declare to be a nuisance some feature in or about a certain piece of real estate within the corporate limits, and may require the owner to remove or correct it at his own expense; but if the nuisance became such by reason of something previously done by the municipality itself the latter must compensate the owner before exercising the power.[11]

### Protection of Human Beings in Buildings.

Of late a duty unknown to common law has been created by statute affecting persons who own or control buildings, the contemplated use of which involves an aggregation within these buildings of human beings. The duty goes to the providing for the health, safety, and comfort of such human beings.

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9 Ford *v.* Kansas City, 181 Mo. 137.

10 Canton Co. *v.* Flynn, 40 Md. 312; Heeney *v.* Sprague, 11 R. I. 456.

11 Chicago *v.* Laflin, 49 Ill. 172.

**53. Same — Tenement-Houses — Apartment-Houses.**

Such buildings include, besides factories, hotels, etc., tenement-houses; and the term "tenement-house," since the principle of law which gives protection to dwelling-houses has no reference to their quality, construction, or magnitude, includes probably what are known as "apartment-houses," even where in such statute the latter are not named specifically.[12]

**On Whom Rests the Duty — Owner of the Premises — Owner of the Business.**

It has been a matter of continual question, on whom is it intended that this duty shall rest, the owner of the premises or the owner of the use — the tenant in possession — who conducts the business done there, and conducts it for his own profit? Without attempting to answer the question at this point it may be said that, however it may be in regard to the "maintaining" the premises in the condition that the law requires,[13] the owner is required to put them into that condition primarily.[14]

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12 White *v.* Maynard, 111 Mass. 250. Section 53 of the New York Building Code sets forth regulations for constructing, with a view to safety from fire, "apartment-houses, tenement-houses and dwellings of certain height;" and this section, together with sections 102 to 107, inclusive, provides for such protection in non-fireproof buildings. The requirements are variously stand pipes, fireproof shutters and doors, fire-escapes, etc., to the utmost of the corresponding requirements of the Tenement-House Act, so that in this respect the two enactments seem to be cumulative.

13 Schott *v.* Harvey, 105 Pa. St. 222; Keeley *v.* O'Connor, 106 Pa. St. 321; Rogers *v.* Tilley, 20 Barb. 639.

14 Arms *v.* Ayer, 192 Ill. 601; De Ginther *v.* New Jersey Home, etc., 58 N. J. Law, 354, 33 Atl. 968.

### 54. Tenement-Houses — Measures Looking to Safety of Inmates from Fire.

In most of the States — even where these buildings are given no especial attention otherwise by the legislature — laws have been made with a view to having tenement-houses equipped with some fitting apparatus to facilitate the escape of inmates in case of fire.[15] This solicitude on account of fire has moved the legislature of New York to go even farther and to enact that, in erecting these tenement-houses or altering other buildings into such, if the completed structure is to exceed six stories in height it must be fire-proof.[16] A fire-proof tenement-house here contemplated is "one the walls of which are constructed of brick, stone, iron or other hard incombustible material, and in which there are no wood beams or lintels, and in which the floors, roofs, stair-halls and public halls are built entirely of brick, stone, iron or other hard incombustible material, and in which no woodwork or other inflammable material is used in any of the partitions, furrings or ceilings."[17]

### 55. The New York Tenement-House Act.

In New York there is in operation a voluminous enactment known as "The Tenement-House Act."[18] There rules and regulations are set forth as to not

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15 The duty of placing fire-escapes upon buildings is one generally created by statute, and the latter must be strictly construed, therefore. There was no such duty at common law. Jones *v.* Granite Mill Co., 126 Mass. 84.

16 Laws of N. Y. (1904), chap. 346, § 11.

17 N. Y. Tenement-House Act (see note following), chap. 1, § 2, subd. 7.

18 Laws of N. Y. (1901), chap. 334.

only the construction of the buildings but the subsequent management of things in the latter in a way conducive to the health, safety, and morality of the inmates. Of the many features of this act one is the requirement, already mentioned, for fire-escapes.[19] Then there is a provision for open ground spaces about the structure;[20] another for glass panels in doors, etc., to correct an otherwise insufficiency of natural light in the hallways;[21] another for proper banisters and railings on all stairways;[22] another for modern sanitary devices for water-closets;[23] another for the exclusion of dissolute women from among the inmates.[24] These are not, of course, all the provisions, but only some of the most important ones, the act being very elaborate.[25] It will be found set out at length in the appendix.

**56. Enforcement of the Act by the Municipality.**

Under the act a penalty by fine or imprisonment, or both, may be imposed upon "*every one* who shall vio-

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19 Laws of N. Y. (1901), chap. 334, § 12.

20 Tenement-House Act, § 51 *et seq.* The N. Y. Building Code, after defining an "apartment-house," goes on thus: "Any such building hereafter erected shall not cover any greater percentage of a lot than is lawful to be covered by a tenement-house; and the requirements for ventilation for a tenement-house shall also apply to an apartment-house." N. Y. Building Code, § 9.

21 Tenement-House Act, § 62 *et seq.*, § 80 *et seq.* And see last note above.

22 Tenement-House Act, § 36.

23 Laws of N. Y. (1901), chap. 334, § 100.

24 Laws of N. Y. (1901), chap. 334, § 141.

25 Laws of N. Y. (1901), chap. 334, § 122. But section 122, *supra*, requiring approval to be given by the department of buildings, was changed, April 14, 1903, by chapter 179 of the laws of that year, page 395, so as to authorize the tenement-house department to signify the approval. McManus *v.* Annett, 91 N. Y. Supp. 808.

late or assist in violating " any or all these provisions *wilfully;* and by fine, at least, otherwise. Also it is, under the act, an offense punishable by fine if the owner of the building, the owner of the lot, or the owner of some other building on the lot is acting in violation of any of these provisions, or fails to comply with a notice or order of the tenement-house department, or maintains any kind of a nuisance on the premises.[26] That department is authorized — in case of the offending as above in any manner in respect of these requirements or in disregard of such notice or order — to begin proceedings to abate the violation, or nuisance if such; and pending these the use and occupation of the building and all work in or upon it may be enjoined.[27] Moreover if the owner or lessee (proprietor) is a nonresident or cannot, after diligent search, be served with process the proceedings may be brought against the property and the fines be made a lien upon it.[28]

### 57. Statutory Duty of Owner — How Far Other Persons Affected.

Sometimes it is said loosely that when it is enjoined upon a person by a law-making power to do an act and he neglects to do it any other person specially injured thereby is entitled to recover from the delinquent damages in an action on the case, if no other remedy is given; and that, too, even where the particular law imposes a penalty for the violation.[29] It has

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26 Tenement-House Act, § 126.

27 Tenement-House Act, § 128, as amended by Laws of 1903, chap. 179, p. 424.

28 Tenement-House Act, § 126.

29 Pauley *v.* Steam Gauge & Lantern Co., 131 N. Y. 90.

been doubted, however, if the adjudications go to establish as much as that. The liability in a suit by an individual should be limited to cases in which the neglected duty has been prescribed *for the benefit of a particular class of persons,* which class includes the plaintiff, or in consideration of some emolument or privilege conferred or provision made for its performance. The individual's right of action does not extend to a duty imposed without consideration and for the benefit of the public at large. The only liability for the neglect of such a duty is the penalty prescribed.[30]

**58. Spring of a Personal Action — Statute — Municipal Ordinance.**

Another thing to be considered here is that such a liability cannot be created by municipal ordinance. There are many things forbidden by ordinance which are nuisances or torts, and actionable at common law; the question does not relate to them. The question is, whether a person neglecting such a duty is liable, not only for the penalty prescribed, but also in a civil action in favor of a person specially injured by the neglect.[31] Of course it is different where the owner is guilty of not neglect merely, but the commission of an act, or of a neglect so gross in nature that it amounts virtually to a thing done in utter defiance of law. In such a case plainly the owner would be liable.[32]

**Statute — Violation — Evidence as to Negligence.**

The failure to perform a duty imposed by statute, where injury to another was a consequence, is evidence

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30 Cooley on Torts (2d ed.), 783; Flynn *v.* Canton Co., 40 Md. 312; Moore *v.* Gadsden, 93 N. Y. 12; Railroad Co. *v.* Hairston, 122 Ga. 372.

31 Heeney *v.* Sprague, 11 R. I. 456; Railroad Co. *v.* Hairston, *supra.*

32 Owings *v.* Jones, 9 Md. 108.

upon the question of negligence on the part of the person chargeable with the failure;[33] but while violation of a statute may be proof as one fact for consideration by the jury it does not necessarily establish negligence.[34]

59. Indemnity — Municipality — Contractor — Right of Action — Pari Delicto.

A municipality, after judgment recovered against it in favor of a person injured through a defect in a sidewalk, has after first paying the judgment recourse against the owner of the property abutting on such sidewalk for indemnity, and may sue such owner accordingly;[35] provided the keeping the walk in repair had been imposed by law upon such owner as a duty.[36] Likewise if a duty has been assumed by contract recourse may be had under similar conditions against the person so assuming by the person originally liable.[37] It must be kept in mind, though, that before seeking the indemnity by action the plaintiff must have suffered a judgment at the hands of the injured party and have paid it. The rule of *pari delicto* does not apply when one does the act, or creates the nuisance, and the other, although not joining with him, is exposed to liability and suffers damage. For that damage the passive party may sue the wrongdoer. In such cases the parties are not *in pari delicto* as to each other though as to third persons either may be held liable.[38]

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33 McRickard *v.* Flint, 114 N. Y. 222.
34 Connolly *v.* Ice Co., 114 N. Y. 108.
35 Chicago *v.* Robbins, 67 U. S. 418.
36 Village of Fulton *v.* Tucker, 3 Hun, 529.
37 Brooklyn *v.* City Railroad Co., 47 N. Y. 475.
38 Gray *v.* Boston Gas Light Co., 114 Mass. 149.

**60. Private Persons — Personal Injuries — Leased Premises — Owner's Liability.**

We have seen that when premises have been let to a tenant, and some third person then, by reason of some dangerous nuisance in or about them, has suffered injury the owner is liable in case only that the nuisance was there — and known by such owner to be there — at the time of the letting.[39] Upon that showing, however, there is no question at all as to his liability;[40] that is, provided the injured person is otherwise in a position to sue.

**Same — Plaintiffs — Licensee — Trespasser.**

If such injured person was a mere licensee the owner's duty to him went no farther than to refrain

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39 Gray *v.* Boston Gas Light Co., *supra*. And see Lazarus *v.* Parmley, 113 Ill. App. 625.

40 "The owner of premises who leases them when they are already a nuisance, or must become so from user, and receives rent, is liable for damage to a stranger happening therefrom, whether the owner be in possession or not." Swords *v.* Edgar, 59 N. Y. 28; Rich *v.* Basterfield, 56 E. C. L. 784. To be sure, "when the tenant has covenanted with the landlord to make all needful and proper repairs, both internal and external, the owner is relieved of liability for danger to the public from snow sliding off the roof, it not appearing that the roof was beyond the tenant's power to keep clean." Leonard *v.* Storer, 115 Mass. 86. The occupier and not the owner is bound — as between himself and the public — so far to keep the building abutting on a highway in repair that the way may be safe for travelers. Shipley *v.* Fifty Associates, 101 Mass. 251. A covenant "to keep in repair," however, goes no further than to keep the premises in as good repair as they were in at the time of the demise. Stanley *v.* Agnew, 12 Mees. & W. 827; Foster *v.* Bott, 6 Mass. 63. Indeed if the covenant went beyond this in intention it would not relieve the owner from liability to a third person suffering injury by reason of the defect. "A lessee's covenant with his landlord to repair gives a stranger no action for damages against him in case of personal injuries caused by such repairs not being made." Clancy *v.* Byrne, 56 N. Y. 129. And the reason is that,

from any deliberate acts calculated to injure him;[41] a licensee being one who has authority to do a thing which without authority so given is prohibited.[42] If so slight a duty attaches to an owner in the case of a licensee it is superfluous almost to say that none at all does in the case of a trespasser. In short, an owner's obligation to others in regard to the premises is no more than that they shall be safe for those who are impliedly invited to enter them.[43] It is well to say here that when the landlord is liable for a nuisance existing before the letting the liability is not shifted as to third persons by the lessee's agreement to repair.[44]

### 61. Liability of Owner's Agent — Same of Owner's Trustee.

The agent of a nonresident owner of a building, in complete charge of the latter and with full authority to make needful repairs, is liable in his private capacity for an injury to a third person which could

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"whenever a wrong is founded on a breach of contract the plaintiff suing in respect thereof must be a party or privy to the contract, else he fails to establish a duty toward himself on the part of the defendant, and fails to show any wrong to himself." Clancy *v.* Byrne, *supra.*

41 Burger *v.* Johnson, 6 Ohio N. P. 252.

42 City of Carbondale *v.* Wade, 106 Ill. App. 654. "The distinction which exists between the obligation which is due by the owner of premises to a mere licensee who enters thereon without any enticement or inducement, and to one who enters on lawful business by the invitation, either express or implied, of the proprietor is well settled. The former enters at his own risk. The latter has a right to believe that, taking reasonable care himself, all reasonable care has been used by the owner to protect him in order that no injury may occur." Severy *v.* Nickerson, 120 Mass. 306.

43 Klapproth *v.* Baltic Pier Co. (N. J. Law), 43 Atl. 981; Collins *v.* Decker, 105 N. Y. Supp. 357.

44 Calder *v.* Smalley, 66 Iowa, 219.

have occurred only through such agent's neglect.[45] A trustee under an express trust of real estate, when upon him has been imposed by the instrument creating the trust the duty of managing and keeping in repair such real estate, is personally liable — at least in the first instance — by virtue of the legal title vested in him, for failure to perform the duty.[46]

**Insurers Against Fire — "Unoccupied Building"—Application to Tenement-House.**

A tenement block is not — within the meaning of the familiar phrase of insurance policies — "unoccupied" unless, as a matter of fact, it *is* unoccupied. It was said once in a case where two tenements in such a house had been occupied that not only the building had been "not within the words" but it had been "not within the mischief that the insurer is designed to be protected against by the phrase."[47]

**62. Creditors — Homestead in Apartment-House.**

It has been held that a homestead cannot be reserved in a hotel although the owner lives in it;[48] but it may include a whole dwelling-house, though portions of it be occupied by persons paying rent for their accommodations.[49] And in Wisconsin it was said once that portions might he held by persons, other than of the family of the owner, for business uses

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[45] Lough *v.* Davis, 35 Wash. 449, 77 Pac. 732; Osborn *v.* Morgan, 130 Mass. 102; Baird *v.* Shipman, 132 Ill. 16; Ellis *v.* McNauchten, 76 Mich. 237.

[46] Gillick *v.* Jackson, 83 N. Y. Supp. 29; Keating *v.* Stevenson, 47 N. Y. Supp. 847.

[47] Harrington *v.* Insurance Co., 124 Mass. 126.

[48] Laughlin *v.* Wright, 63 Cal. 113.

[49] Mercier *v.* Chace, 93 Mass. 194.

under a rental without destroying the homestead character of the house, provided the owner lived in the building.[50] The only case to be found where the question has arisen over an apartment-house was in Illinois. There the court was of the opinion that the widow should have set off to her as a homestead only the apartments she had been occupying as a dwelling at the time of her husband's death.[51] So far as reasoning goes, it cannot be seen why the Illinois doctrine should prevail any more than that in California as to the hotel. The Wisconsin case was, as the note

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50 Phelps *v.* Rooney, 9 Wis. 55. The prevailing opinion in this case called forth from Dixon, C. J., a dissent, in which he threw ridicule upon the doctrine of his brother judges, in the following language: "We are told in history that Diogenes, the celebrated Cynic philosopher, at one time took up his abode in a tub belonging to the temple of Cybele. I suppose the tub became *ipso facto* a dwelling-house in the ordinary sense of that word, and that hereafter strict propriety of language will require us to say that he lived in a dwelling-house belonging to the temple, instead of a tub. Nay, more, I suppose the moment the philosopher got into the tub the whole temple instantly became a dwelling-house and that he might — had he been so inclined — have claimed it as exempt under the operation of a statute like ours."

51 "In case a householder occupies a flat in a flat building, or an apartment in an apartment building, as a homestead, his residence is as much disconnected from the other flats or apartments located in said building as though the portion thereof occupied by him was located upon a different lot or under a different roof; and while in a case like this it might work no great harm to hold that the widow — after the death of the householder — might rightfully retain the possession of the entire building until her homestead was assigned, if the principle was applied to a building containing, as is often the case in large cities, many flats or apartments it would lead to absurd results. Especially would that be true where the widow remained in the apartment with the understanding that she would rent the balance of the premises and account to the heirs for the rent; and it seems clear to us that the complainant should have been required to account for the rents which she collected from the upper flat in the frame building subsequently to James H. Clapp's death." Potter *v.* Clapp, 203 Ill. 592.

shows, ridiculed in a dissent by a very able judge. The question seems to be one of conjecture.

**63. Nuisance — Owner's Right of Action.**

To maintain trespass *quare clausum fregit* one must have the possession, as has been said somewhere *supra*. The fact of one's being a lessor negatives, of course, the idea of possession; so we would not reintroduce the subject here but for an apparent exception to the rule. It is well settled that both the tenant and the landlord may have actions for an injury done to the soil and the buildings on it. Both are injured, but in different degrees; the tenant in the interruption of his estate and the diminishing of his profits, and the landlord in the more permanent injury to his property. They have separate actions for their several damages and a recovery is to be had according to their respective interests.[52] The owner may maintain trespass *quare clausum fregit* for an injury done the freehold though the land is held by a tenant at will; but that, as we have seen, is because he thereby resumes possession.[53] However, a landlord may have an action for a nuisance of such a character as to injure the reversion. And an owner who has let out separately rooms in his building may have his action in trespass against a stranger doing injury to the property.[54] Here more than the reversion is concerned, for, of course, the landlord has not parted with the entire possession.

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52 Starr *v.* Jackson, 11 Mass. 519; George *v.* Fisk, 32 N. H. 32.

53 Davis *v.* Nash, 32 Me. 411. See also Town of Hingham *v.* Sprague 15 Pick. 102.

54 Curtiss *v.* Hoyt, 19 Conn. 154.

# PART II.

## PROPRIETOR.

# PART II.

## PROPRIETOR.

## CHAPTER ONE.

### Proprietor and Owner.

**64. Quiet Enjoyment — To What the Covenant Goes.**

It has been said above somewhere that in every lease while payment of rent is an implied covenant on the part of the tenant there is, to counterbalance this, an implied covenant on the part of the landlord: this covenant insures to the tenant what is known as *quiet enjoyment*.[1] However, in nearly all cases these covenants are both set out in the lease, if it be a written one. This particular covenant is intended to assure to the lessee a right in law to enter and enjoy the premises so that if entry is denied him either by the lessor himself[2] or by some person having a superior title[3] he has a cause of action against the lessor. Here

1 Part I, *supra*, § 20. And see Taylor's Landlord and Tenant, § 304; Mack *v.* Patchen, 42 N. Y. 167; Dunkler *v.* Webber, 151 Mass. 408.

2 Abbey *v.* Weingart, 71 N. J. Law, 92. An instance of breach of the covenant is found in Garrison *v.* Hutton, 103 N. Y. Supp. 265, where the lessor had barred the lessee's entry except on a condition not warranted by the lease.

3 Gardner *v.* Keteltas, 3 Hill, 330, and cases there cited. But there must be an ouster. So in a case where land encumbered with a mortgage was conveyed by deed, the grantor warranting, by covenant, quiet

there is no obligation assumed by the landlord to see to it that one not having a superior title (hence a wrong-doer) shall bar this entry; and the reason for there being none is easily to be seen after a little reflection.

**65. Why the Lessor Does not Covenant Against Wrong-doers.**

By the lease the landlord parts with the lawful possession and the tenant takes it;[4] and it needs not to be added that what one has parted with he no longer retains. Now, the action of ejectment accrues only to him who has the possession: hence the remedy of the lessee is, after the lease, as perfect and effectual to dispossess the intruding occupant as was that of the landlord before the lease. Against such an occupant the lessee only can bring ejectment, since the owner is in no position to do so. Therefore the lessee has not, as in the other case, an action against the lessor on his covenant.[5] In the other case the lessor undertook to hand over that which he did not have at the time and therefore was not in condition to hand over, to-wit: the lawful possession.[6] The covenant goes only to the

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enjoyment: and afterward a decree was entered to enforce the mortgage and the grantee, mentioned in the deed above referred to, bought at the master's sale, it was held this grantee had no action against his grantor for breach of warranty inasmuch as there had been no ouster. Waldron *v.* McCarty, 3 Johns. 471.

[4] A tenant can bring an action of trespass against his landlord for forcibly breaking into the leased premises. Barnecastle *v.* Walker, 92 N. Car. 198.

[5] Gardner *v.* Keteltas, 3 Hill, 330.

[6] By agreeing to let a lessor impliedly promises that he has a good title to let. Stanks *v.* St. John, L. R. 2 C. P. 376. But a subtenant who deliberately deprives his lessor of the power to deliver possession, cannot hold such lessor responsible for failure to deliver it. Maas *v.* Kramer, 101 N. Y. Supp. 800.

possession and, as it has been said:[7] "It is broken only by an entry or lawful expulsion from, or some actual disturbance in the possession."[8]

**66. Passive Lessee—Trespasser—Inference Abandonment.**

And when, in the case of wrongful occupancy, the lessee holds aloof and will not prosecute the trespasser; but sues the lessor instead, and will not say *yes* or *no* as to whether, in case the lessor manages in some way to get rid of such trespasser, he will occupy, as under his lease he alone has the right to do, the landlord is at liberty to regard the lease as abandoned, and he may put into the property whomever he chooses.[9]

**Breach of the Covenant — Practical Test.**

To recapitulate somewhat, the landlord covenants against only lawful occupation by persons other than the lessee. Unlawful occupants are, as we have seen, necessarily trespassers; and against these, on account of his having the lawful possession, only the lessee can proceed.[10] In short, the effect of the covenant is that

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7 Waldron *v.* McCarty, *supra.*

8 Tucker *v.* Du Puy, 210 Pa. St. 459.

9 Gozzolo *v.* Chambers, 73 Ill. 75.

10 But in Field *v.* Herrick, 14 Ill. App. 181, it is said: "In Coe *v.* Clay (5 Bing. 440, — E. C. L. 660), the defendant had agreed to let the plaintiff certain premises and the action was for letting him into possession which — a preceding occupant having wrongfully refused to quit — the defendant was unable to do. It was argued that the lessor should have proceeded to get the preceding wrongful occupant out, but the court held that, 'He who lets agrees to give possession and not merely a law suit.'" And see L'Haussier *v.* Zaller, 24 Mo. 13, where it is said: "A lesser may, without entry bring ejectment against a wrongful occupant or sue the owner for damages for breach of contract in not putting him into possession."

the title is in the lessor and power and right to convey, and that there is no lease outstanding of any part of the premises in favor of another person. If there is such there is an immediate breach of the covenant.[11]

### 67. Fixtures to the Freehold.

Since there is no permanence to the interest of the lessee in the premises it would be only natural for the lessee to intend that such things as he puts upon the latter are to serve his purposes alone and remain his property; and it is thus that the law presumes.[12] Things put into the premises by the lessee for the uses of his business do not become fixtures even when they are composed of substantial material; but may be taken away by him at any time during the lease, provided the act of taking them away has not the effect really of injuring the premises.[13] The cases on the subject of fixtures are very numerous and, many of them being — from their nature — decided on the peculiar facts of each case, do not throw much light upon the general principles which courts have adopted in settling the mutual rights of lessor and lessee to property of this nature. Certain considerations, however, may be kept in mind as forming a basis for the uniform current of judicial decisions.

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11 McAlester *v.* Sanders, 70 Cal. 79; Moore *v.* Weber, 71 Pa. St. 429; Berrington *v.* Casey, 71 Ill. 317. A tenant unlawfully evicted before the end of his term may recover damages from his landlord to the extent of the rental value, at least, of the premises. Shuman *v.* Smith, 100 Ga. 415.

12 Fox *v.* Lynch (N. J. Ch.), 64 Atl. 439.

13 Tifft *v.* Horton, 53 N. Y. 377; Higgins Ferry Co. *v.* Railroad Co., 142 U. S. 413; Van Ness *v.* Packard, 2 Pet. 137; Kerr *v.* Kingsbury, 39 Mich. 150.

### 68. Same — The Law's Indulgence to Tenants.

The law regards with peculiar favor the rights of tenants, as against their landlords, to remove articles annexed by them to the freehold; and extends much greater indulgence to them in this respect than it concedes to executors, remaindermen, or any other class of persons.[14] The reason for this is that tenants usually pay to their landlords adequate rents; and it is equitable, therefore, that they should have the right to remove fixtures that have been put up by them for their own convenience and use and at their own expense.

### Classes of Fixtures Reasonably to be Taken Away.

Fixtures which a tenant is allowed to disannex and take away are comprehended within two classes; or are of a mixed nature, coming within partly and partaking of the natures of both. These are:

1. Things which have been put up for ornament or the more convenient use of the premises, and are called "domestic fixtures."

2. Things which have been put up for the purposes of trade, and are known as "trade fixtures."[15]

### 69. Test of What is Removable.

In order to determine whether, in any particular case, chattels annexed to the freehold come within these classes the case is to be considered in several aspects. Of these a strong one is the mode of the an-

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[14] Elwes *v.* Maw, 3 East, 38; Grimes *v.* Bowcren, 6 Bing. 439; Elliott *v.* Bishop, 10 Exch. 507; Smith's Landlord and Tenant, 264; Wall *v.* Hinds, 70 Mass. 256.

[15] Fox *v.* Lynch (N. J. Ch.), 64 Atl. 439; Gibbons on Fixtures, 22–32; Smith's Landlord and Tenant, 264; Wall *v.* Hinds, 70 Mass. 256.

nexation: that is, whether the things adhere to the fabric of the house and, if so, to what extent. The next consideration is whether they can be taken down and away without substantial injury to the building or themselves. Then an important point is the intention behind the tenant's putting them there in the first place and the purpose they were to serve; that is, whether they were meant to be a substantial and permanent improvement of the realty — "for the benefit of the inheritance," as the expression is,— or were put up and used with merely a temporary object. "Temporary object" here means the adapting the premises to a more convenient occupation and enjoyment for the particular use to which the tenant put them, so that their services affected the end for which he wished the use of the building instead of affecting the building as such.[16] The distinct mark of a fixture is the intention to annex permanently.[17]

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[16] Fox *v.* Lynch, *supra;* Ames and Ferard on Fixtures, Part I, chap. 2, § 1; Smith's Landlord and Tenant, 270, note; Buckland *v.* Butterfield, 2 Broad & B. 54; Hellowell *v.* Eastwood, 6 Exch. 295; Wall *v.* Hinds, 70 Mass. 256.

[17] Fox *v.* Lynch, *supra*; Seeger *v.* Pettit, 77 Pa. St. 437.

## CHAPTER TWO.

### PROPRIETOR AND APARTMENT-HOLDER.

**70. Apartment-holder.**

He whom we term here an apartment-holder is, to speak more in law phraseology, a tenant of the person who has the legal possession of the building in which the demised premises are and who has let it in apartments rather than as a whole. If that person is the owner then the apartment-holder is a lessee; if that person is the proprietor, as we call him here (he being, in legal terms, lessee of the owner), then the apartment-holder is the owner's sublessee.

**Who may be a Tenant — Qualifications.**

To state the qualifications of a lessee is to state the qualifications of a party to any contract; that is, that he shall be able to enter into, also willing to enter into the arrangement, whatsoever it may be. Incompetency in such a connection may be a natural one, depending upon mental condition, or an artificial one, depending upon other conditions, such as immature age or a state of coverture, the married woman's state. Another thing requisite to make a contract binding is that the parties actually did enter into the arrangement.

**71. Married Woman as Lessee.**

These principles are well known, but in regard to married women it is to be said that, irrespective of contracts generally, such a woman living with her hus-

band and occupying the premises with his consent may be held liable as a tenant.[18] It also is to be said that a husband who occupies with his wife under a parol lease to the wife cannot avoid the duty to pay rent demanded of him.[19] That is, of course, if there is rent actually due and unpaid. But the husband does not by his act bind his wife as a tenant, necessarily in all respects.[20]

**Tenement — Old General Definition — Later Restricted Sense.**

*Tenement* is a word of wide meaning and, as Blackstone says: "Although in its vulgar acceptation it is only applied to houses and other buildings, yet in its original, proper, and legal sense it signifies everything that may be holden, provided it be of a permanent nature."[21] Its present acceptation Blackstone would think more vulgar still, for the sort of house now usually so called is a very small one. Worse than that, the word, as most commonly applied in our day, indicates hardly a house, but only part of one.

**72. Same — Sense Now Generally Given the Word.**

In fact, by the word "tenement" now often is meant rooms let in a house, or such part of a house as

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18 Rogers *v.* Coy, 164 Mass. 391.

19 Nash *v.* Berkmeier, 83 Ind. 536.

20 A lease for twenty-one years contained a covenant by lessee to repair and also a declaration that he held as trustee of his wife; however, the lessee did not covenant expressly as the trustee of the wife. The latter used the premises as a dressmaking establishment. The husband died, and at the expiration of the lease the property was very much out of repair. The widow had done some repairing from time to time and had paid the rent. There was no recovery against her on the covenant to repair. Ramage *v.* Womack, Q. B. D. (1900) vol. I, p. 116.

21 Commonwealth *v.* Hersey, 144 Mass. 297.

is occupied separately by a single family or person, in contradistinction from the whole house.[22] Even a part of a room may be a man's tenement, where he occupies it independently of another who occupies another part of the same room, although there be no partition between them, but only a passageway which they use in common. The occupant would be a tenant.[23] Under the New York "Tenement-House Act" the word "tenement-house" has a special significance, to-wit: "A tenement-house is any house or building, or portion thereof, which is rented, leased, let or hired out, to be occcupied, or is occupied as the home or residence of three families or more living independently of each other, and doing their cooking upon the premises, or by more than two families on any floor, so living and cooking, but having a common right in the halls, stairways, yards, water-closets or privies, or some of them."[24]

### 73. What is a Lodger — Distinction Between Such and Tenant.

"It is not easy to give a general definition of the term *lodger,* but it involves more than the word *tenant.* There is a personal relation. A lodger lodges with some one who has control over the place where the party lodges. The question whether a person is a

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22 Young *v.* Boston, 104 Mass. 95.

23 Commonwealth *v.* Hersey, 144 Mass. 297. By the law of California, if one sleeping-room is let to persons separately the first lessee is entitled to the whole notwithstanding any agreement; but if it is occupied as separately let, so long as this occupancy continues other tenants of the house are relieved of the duty of paying rent. Cal. Civ. Code, § 1950.

24 N. Y. Tenement-House Act, Chap. I, § 2, subd. 1.

lodger or not depends partly on the contract between him and his landlord, and partly on the fact that the landlord retains control and dominion over the house."[25] When one contracts with the keeper of a hotel or boardinghouse for rooms and board, whether for a week or a year, the technical relation of landlord and tenant is not created between the parties. The lodger acquires no interest in the real estate. If he is turned out before the time expires for which he contracted to occupy, he cannot maintain ejectment; and while he remains the landlord cannot obtain his pay by distraining for rent.[26] A family of boarders or lodgers in a house are not tenants, and an oral contract to pay for board and lodging is not an interest in lands within the statute of frauds.[27]

74. Same — Apartment-holder — Distinction.

A sublease of a portion of a building given by one holding a lease for years on the building as a whole is a conveyance of an interest in lands within the statute providing that no interest in lands other than leases for one year, or under, shall be conveyed by parol.[28] A tenant of apartments substantially connected together so as to be occupied by him as a single tenement virtually, he having the sole and exclusive possession of them and, in conducting and maintaining his domestic establishment, having no connection with or dependence upon the owner, or upon the occupant of any other portion of the building,

25 Lord Justice Lindley in Toms *v.* Luckett, 5 C. B. 38.
26 Wilson *v.* Martin, 1 Den. 602.
27 White *v.* Maynard, 111 Mass. 250.
28 Fratcher *v.* Smith, 104 Mich. 537.

is a housekeeper and not a lodger only.[29] And the house need not be entirely of the one character; its use need not be confined exclusively to occupation by tenants under lease. It has been held that transient guests may be entertained in a so-called apartment-house just as in a hotel or lodging-house, and that no one can complain justly unless some express contract is violated.[30]

### 75. Apartment-holder a Lessee.

A written contract which provides for the holding, by one party of another for a precise time at a definite weekly rate, of specific rooms separated from all others in the same house so as to become, in fact and in law, the separate tenement of the party so holding has the ordinary marks of a lease, and the case is not one of a contract between a boarding-house-keeper and a lodger.[31] And the fact that, besides leasing the rooms, the lessor undertakes to furnish specific accommodations and imposes certain restrictions upon the use of the premises does not change the essential character of the instrument.[32]

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29 Swain *v.* Mizner, 74 Mass. 182.

30 Bristol Hotel Co. *v.* Pegram, 98 N. Y. Supp. 512. As for the letting of lodgings in a tenement-house, "No horse, cow, calf, swine, sheep or goat shall be kept in a tenement-house, or on the same lot or premises thereof, *and no tenement-house or the lot or premises thereof shall be used for a lodging-house or stable*, or for the storage or handling of rags." Tenement-House Act, § 110. Quære, whether there has been an omission of the words "for them or any of them" after the word *stable* in the section quoted; if so the note has no application to the text. As it stands, however, *lodging-house* in the section is in very strange company.

31 White *v.* Maynard, 111 Mass. 250.

32 Porter *v.* Merritt, 124 Mass. 534.

**What is an Inn.**

An *inn* is a house where all who conduct themselves properly and are able and ready to pay for their entertainment are received, if there is accommodation for them, and who without any stipulated engagement as to the length of their stay or as to the rate of compensation are, while there, supplied at a reasonable charge with meals, their lodgings and such service and attention as are necessarily incident to the use of the house as a temporary home.[33]

**76. Same — Obligation on the Proprietor.**

In such the right of an applicant to shelter and entertainment is not controlled by the wishes or the whims of the proprietor,[34] but the latter is bound by law to accommodate him with both, if it is possible to do so.

**Proprietor of Apartment-house Not So Bound.**

It is not the same in the case of an apartment-house; for the proprietor of such an establishment is under no obligation to accept as a tenant any person he may not desire to have, be his reason what it may.[35]

**Inn — Apartment-house — Nonpayment — Difference in Remedy.**

On the other hand, in the case of an apartment-house the proprietor, if the apartment-holder has failed to pay what is due for the premises he occupies, cannot have a lien for the same on the property of the

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33 Cromwell *v.* Stephens, 3 Abb. Pr. (N. S.) 26; Matter of Brewster, 80 N. Y. Supp. 666.

34 Laws of N. Y, 1895. p. 974, chap. 1042.

35 Alsberg *v.* Lucerne Hotel Co., 92 N. Y. Supp. 85.

delinquent to be found on the premises;[36] as would be the case were the relation one between a lodger and the keeper of an inn or — in some States — of a boarding-house.[37] The remedy of the apartment-house proprietor, that he has not in common with other creditors, is distress only.[38]

77. **Apartment-house and Tenement-house — Distinction.** If technically, and outside of the consideration of style in appearance and appointments, there is a distinction to be drawn between a "tenement-house" and an "apartment-house" it depends on the presence or absence of features upon which stress has been laid in enactments as to the former by name, to-wit: occupation "as the home or residence of three families or

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[36] Shearman *v.* Iroquois Hotel & Apartment Co., 85 N. Y. Supp. 365. But according to Newman *v.* Anderton, 5 Bos. & Pul. 224, distress lies for the rent of furnished lodgings.

[37] Sec. 1. Section 71 of chapter 418 of the Laws of 1897, entitled "An act in relation to liens," (and constituting chapter 49 of the General Laws of New York), as amended by N. Y. Laws of 1899, p. 834, chap. 380. At common law, in the absence of agreement to such an effect, a person not a warehouseman or innkeeper has no lien on personal property even for storage of the property itself. Machine Co. *v.* Holway, 92 Me. 412.

[38] Hessel *v.* Johnson, 6 Phila. Co. Ct. 231, also 129 Pa. St. 173, 18 Atl. 754, also 142 Pa. St. 8, 11 L. R. A. 855, 21 Atl. 794. Distress lies for the rent of furnished lodgings. Newman *v.* Anderton, 5 Bos. & Pul. 224. On the other hand see the following: Johnson, J.: "The rule very clearly is that a lessee cannot distrain upon his sublessee for rent in arrear; and the technical reason seems to be the want of privity of estate between them — the right of distress being inseparable from the reversion (Prescott *v.* DeForest, 16 Johns. 159). But a more practical reason will be found in the circumstance that, if allowed, the landlord might be deprived of the means of distress. If the lessee may distrain, so may the sublessee on his lessee, and so on *ad infinitum*, and so the tenant in possession be subjected to infinite distress. Ragsdale *v.* Estis, 5 Rich. (So. Car.) 429.

more living independently of each other, and doing their cooking upon the premises, or by more than two families upon any floor, so living and cooking, but having a common right in the halls, stairways, yards, water-closets or privies, or some of them."[39] This is not a definition, however, so much as a test of the applicability of such statutes as the verbal description occurs in.[40] The two are similar in respect of the main consideration that, while not being, either of them, inns or boarding-houses, they afford under one roof dwellings for separate families living independently of each other and of the person of whom they hold.[41]

**78. Apartment-house — Statutory Definition.**

The New York "Building Code" defines an apartment-house as being "every building which shall be intended or designed for, or used as, the home or residence of three or more families or households, living independently of each other, and in which every such family or household shall have provided for it a kitchen, set bathtub and water-closet, separate and apart from any other."[42] When, though, a common-law

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[39] Laws of New York, 1867, chap. 908; Laws of New York, 1884, chap. 272; Laws of New York, 1901, chap. 334, § 2. See also § 3 of the Sanitary Code.

[40] Referring to this form of words in Laws of N. Y., 1867, p. 2273, chap. 908, Ingraham, J. says: "This definition of tenement-house, however, is expressly restricted to that particular act. Provision was there made for the regulation of tenement and lodging-houses in the cities of New York and Brooklyn, and that statute was passed at a time when, according to the submission, apartment-houses and houses of the character now known as apartment-houses were unknown." White *v.* Building & Construction Co., 81 N. Y. Supp. 434.

[41] Swain *v.* Mizner, 74 Mass. 182.

[42] Part III, § 9 of the N. Y. Building Code Ordinance (1899 as amended 1903) passed by Municipal Assembly of New York City pursuant to Charter of Greater New York."

right or a common-law duty adheres to the tenant of apartments in either class of these houses plainly it adheres to a tenant of apartments in a house of the other class. It is different, of course, where the duty is one imposed by statute, where the statute itself defines the sort of house to which it has reference.[43]

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[43] Is an *apartment-house* a *tenement-house* within the contemplation of the Tenement-House Act? The expression "apartment-house" is not used in that act anywhere. On the other hand, the Building Code, a large part of which is devoted to tenement-houses and in which frequent reference is made to the act mentioned, does not define a tenement-house, although it *does* define an apartment-house, also a private dwelling and a hotel. This fact might inspire the thought that an apartment-house *is* a tenement-house; particularly since that code provides for itself that it be liberally construed, being remedial in nature. The definitions of the one and the other which — on authority — we have given in the text differ only in respect of there being a "kitchen" and a "bathtub" to an apartment-house. To be sure, separate water-closets enter into the statutory definition of an apartment-house and not into that of a tenement-house; however, they are made obligatory in the latter by other provisions of the Tenement-House Act, and so that point of distinction is removed. The corresponding statement in the other definition has "the cooking" merely "done on the premises" and contains not even remotely a requirement for "a bathtub." In that code (§ 53) we find, however, the expressions "apartment-houses," "tenement-houses," and "dwelling-houses" associated both conjunctively and disjunctively, as though the first two were no. more synonymous than all three. But a word here as to "dwelling-houses." A feature in the code definition of a "private-dwelling" is its being "the home or residence of not more than two separate and distinct families or households" (§ 8); what is intended, then, by "every dwelling-house occupied by three or more families," words occurring in section 103 of the same law (Building Code) requiring buildings to be equipped with fire-escapes? In the same connection neither "apartment-house" nor "tenement-house" appears. Does a "dwelling" import more than a "private dwelling"? If so, is the implication here that it includes both the buildings thus unmentioned? There is room for no other inference, inasmuch as the section enumerates all other sorts of buildings in which people may be said to reside; hotels, lodging-houses, boarding-houses, schools, hospitals, asylums, etc. But to proceed; section 9, that contains the

**Construction of a Statutory Duty.**

When a duty is fixed by statute the statute must be followed to the letter, because, as it is said, it is in derogation of the common law. It has appeared already that statutes assuming to affect a defined class of houses have reference to houses only within the definition.[44] That to which in this country we apply the expression "tenement-house" was not known to the common law.

**79. General Nature of the House.**

In order that it may have the character of an apartment-house or a tenement-house the building needs not to have been put up as either originally, but may have been adapted for the present use, having had another before.[45] It seems that in England a house is not "divided into and let in different tenements" unless

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definition of an apartment-house, closes with the words: "The requirements for light and ventilation for a tenement-house shall also apply to an apartment-house," as if otherwise such an application was by no means a matter of course. Comparing the two definitions it seems rather absurd that the sole point of distinction should be the presence in an apartment-house of a bathtub and a room to cook in in each apartment. The inference is that the man who bathes needs no looking after in the interest of the public. The legislature could have provided for a liberal construction of the Tenement-House Act, just as was done in the case of the Building Code; but in the absence of some such provision it, being in derogation of the common law, must be construed with strictness. The conclusion is irresistible that the legislature did not intend that the act should apply generally. However, the only effect apparent is that, whatever the practice may be, apartment-houses are not forced under the scrutiny of the tenement-house department: for it will be found on inspection, that the Charter, the Sanitary Code, and the Building Code are amply adequate to insure health, safety, etc., so far as they are concerned. The Building Code, as we have seen, is expressly remedial and is to be liberally construed so as to reach the desired end in view.

[44] White *v.* Building & Construction Co., 81 N. Y. Supp. 434.

[45] Health Department *v.* Rector, etc., of Trinity Parish, 145 N. Y. 32.

each of the latter has a hall and stairway of its own.[46] In this country they have not these, as a rule, and the fact that in American houses of such nominal characters as we are speaking of the several tenants have a common use of such utilities is the one principally that makes the old treatises on Landlord and Tenant less serviceable in this connection than in others.

**Caveat Emptor.**

When on the subject of the relation of Owner and Proprietor[47] we saw that upon the demise of a house or lands there is no contract or condition implied that the premises shall be fit or suitable for the use the lessee desires to put them to,[48] it follows that there is no such implication either when the subject of the demise is a part of a house.[49]

**80. The Law of Easements.**

But when one part of an estate is, of necessity, dependent on a use of some sort, in another part, and the owner conveys either part without express provision on the subject, the part dependent — the *dominant estate,* as it is called — carries with it or reserves an easement of such necessary use in the other or *servient estate.*[50] It would be the same were the dominant estate a room or suite of rooms in a house and the

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46 Yorkshire Fire & Life Ins. Co. *v.* Clayton, 44 L. T. (N. S.) 302; Attorney-Gen. *v.* Mutual Tontine Westminister Chambers Assn., L. R. 10 Exch. 305.

47 § 19, *supra.*

48 See § 18, *ante*; Smith *v.* State, use of Walsh, 92 Md. 518.

49 Kushes *v.* Ginsberg, 91 N. Y. Supp. 216; Clyne *v.* Holmes, 61 N. J. Law, 359.

50 Ryan, J., in Dillman *v.* Hoffman, 38 Wis. 559.

servient estate a hallway or stairway leading to it, or a roof that covers all.[51]

**Undemised Portions of the House — Landlord's Duty — Repairs.**

Now suppose the proprietor has let rooms or suites to separate tenants and reserved such halls, stairways, roofs, etc., to be used in common by all the tenants; the fact that a design in the so reserving them was that thereby possible tenants would be attracted to the apartments would impose upon the proprietor the duty of keeping these undemised parts of the house in reasonably good order at least.[52]

**81. Same — Landlord's Liability.**

It is the law, therefore, that the proprietor of such a house is bound to have the yards, coal-holes, hallways, staircases, etc., in proper repair and a reasonably safe condition; and is chargeable with damages to anyone rightfully there who suffers injury through his failure to do so.[53] But this does not require him to make any out-and-out change in any of these utilities from what it was at the time of the letting.[54] And the consequences are not either to be visited upon him if

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51 Benedict *v.* Barling, 79 Wis. 551.

52 Sawyer *v.* McGillicuddy, 81 Me. 318.

53 The landlord must keep in repair all parts of the building (including fixtures) not exclusively demised to the tenant, and is liable for damages to any tenant suffering from his default in such duty. Peil *v.* Reinhart, 127 N. Y. 385; Canavan *v.* Schuyler, 27 N. Y. Supp. 413. The use of the elevator, where there is one, would be included also in the demise as a common utility. This subject will be considered further on.

54 Woods *v.* Cotton Co., 134 Mass. 357.

the tenant chooses to put one of these utilities to a purpose for which it was not intended.[55]

**Utility Pertaining to One Tenant — Landlord's Duty.**

In the absence of some agreement between the parties to such an effect the proprietor is not liable to the apartment-holder for any injury to the latter caused by a defective roof which covers the premises of such apartment-holder only, rather than those held by the tenants of the house generally.[56] It is plain that that would not be a common utility, but part of the demised premises; and the implied covenant in leases is that the tenant is to repair.

**82. Demised Portion — Landlord's Liability.**

As to the demised premises, if the landlord has covenanted to keep them in repair he must do so, of course: that is, if the covenant was as of a time preceding entry. But a promise to repair made by him afterward cannot be enforced, being without consideration.[57] And if the lease was a written one the tenant cannot go behind it and show an oral promise

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55 Walsh *v.* Frey, 101 N. Y. Supp. 774. "But when the reason ceases the law ceases. Although the relation of landlord and tenant exists between these parties as to the tenement occupied by the plaintiff it does not as to the stairway in question. Over that she has only a right of way in common with others; no right of exclusive or any possession, except as she is passing over it, *no right of entry even for any other purpose.*" Sawyer *v.* McGillicuddy, 81 Me. 318. And see McGinley *v.* Alliance Trust Co., 168 Mo. 257. In that case, the accident occurred through the tenant's daughter *leaning against* a stair rail so that it broke, precipitating her to the ground. And see also McAlpin *v.* Powell, 70 N. Y. 126, where a boy was killed by falling through a rotten fire-escape apparatus on which he was playing.

56 Margolius *v.* Muldberg, 88 N. Y. Supp. 1048.

57 § 35, *supra.*

made at that time. It is to be said, too, that a breach by the landlord of his covenant to repair does not give liberty to the tenant to abandon the premises, unless the covenant amounted to a condition precedent:[58] for the tenant himself should make such repairs as are necessary and deduct the expense from the rent.[59] If the landlord sues him for the rent this expense can be set up as a counterclaim. In a case where a landlord had given the tenant ample money to expend upon certain repairs and the tenant then had done nothing, and a guest of his had received injuries afterward through the uncorrected defect, it was held the facts relieved the landlord from liability.[60]

**83. Landlord's Liability on His Covenant to Repair.**

The rule is that an action to recover for injuries resulting from the defendant's negligence can be maintained only when the violated duty was one imposed by law.[61] When a duty grows out of any agreement between the parties no action in tort accrues to the party aggrieved by a subsequent failure to perform;[62] and hence a tenant cannot maintain an action for tort against his landlord for a breach of his covenant to repair.[63]

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[58] Doolittle *v.* Selkirk, 28 N. Y. Supp. 43.

[59] Doolittle *v.* Selkirk, 28 N. Y. Supp. 43.

[60] Sterger *v.* Van Sicklen, 7 N. Y. Supp. 805.

[61] Boden *v.* Schultz, 91 N. Y. Supp. 437.

[62] Golob *v.* Pasinsky, 178 N. Y. 716; Schick *v.* Fleishauer, 49 N. Y. Supp. 855; Frank *v.* Mandel, 78 N. Y. Supp. 855; Goluback *v.* Almodo, 80 N. Y. Supp. 1136; Stelz *v.* Van Dusen, 87 N. Y. Supp. 716; Goldberg *v.* Besdine, 78 N. Y. Supp. 776.

[63] Boden *v.* Schultz, 91 N. Y. Supp. 437; Frank *v.* Mandel, 78 N. Y. Supp. 855. In a case where damages were claimed of the landlord for the death of tenant's child, caused by failure of defendant to keep the

**Same — Effect of Tenant's Wrongdoing Upon Such Liability.**

But even if the landlord has violated a duty to his tenant imposed by law and the tenant has suffered an injury in consequence, if it can be shown that the injury came while the tenant was in the act of injuring the landlord the latter's violated duty cannot be a subject for recovery.[64]

**84. Same — Lease of Premises in Bad Order — Fraud — Proof.**

And when it is sought to hold the landlord for fraud in his representations as to the safety of the premises,

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premises properly heated, the court said: "There is no distinction in principle between a covenant to repair and one to keep the premises heated in respect of the right of recovering damages such as are asserted in this action. In Eschbach *v.* Hughes (27 N. Y. Supp. 320), it was held by the General Term of the Common Pleas of the city of New York that where the landlord violated a covenant in a lease requiring him to keep the roof in repair and the tenant contracted pneumonia in consequence of a failure there could be no recovery for the damages caused by the sickness; that they were too remote, were not within the reasonable contemplation of the parties, nor the immediate nor natural result of the breach." Dancy *v.* Walz, 98 N. Y. Supp. 407. See also O'Gorman *v.* Teets, 45 N. Y. Supp. 929, where the sickness was caused, as alleged, by a damp cellar resulting from defective plumbing.

[64] The tenant of an upper-story apartment of a house, the ground floor of which the owner occupied, was killed one night by falling into the cellar through a hatchway in the common hall leading to the stairs. The hall was unlighted, but the hatchway — though notoriously open during the daytime — was kept closed at night. The relation of landlord and tenant between the owner and the deceased was about to close, and it was claimed by the plaintiffs that the purpose of the visit was that the tenant might take the last of his effects away; while the defense contended that its purpose was that the deceased might steal the owner's ale, as he frequently had been caught doing before. The court left the purpose to the jury and on this the recovery hinged as in the latter case the tenant must have made of himself a mere trespasser. Totten *v.* Phipps, 52 N. Y. 354.

after his duly covenanting to repair, it must be made to appear that he did not believe in his own representations and that his intention was to deceive.[65]

**Same — Landlord Must Have Had Notice of the Defect.**

A landlord under obligation to repair cannot be made out to be guilty of a breach without proof of due notice of the necessity for repairs.[66] But notice may be imputed to him — even though no actual knowledge on his part can be shown[67] — if he or his agent had been on the premises during their defective condition, so that the defect hardly could have escaped his attention.[68]

**Same — Contributory Negligence.**

Although a landlord with knowledge of the defect and under promise to correct it should default, so that a member of tenant's family suffered, he would not be liable if the injured person also knew of the defect and easily could have avoided it.[69] So, when the plaintiff had been well aware of the danger — an accumulation of snow and ice on a stairway — and risked the injury

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65 Knshes *v.* Ginsberg, 91 N. Y. Supp. 216.

66 Flood *v.* Huff, 60 N. Y. Supp. 517; Kearines *v.* Cullen, 183 Mass. 298.

67 The general rule is that notice sufficient to make inquiry a duty is notice of all that by reasonable inquiry would be ascertained. Cunningham *v.* Potter, 99 Mass. 248, citing Taylor *v.* Stibbert, 2 Ves. Jr. 440.

68 Nadel *v.* Fichten, 54 N. Y. Supp. 551.

69 Van Tassel *v.* Read, 55 N. Y. Supp. 502. And of course the landlord, notwithstanding the duty imposed upon him generally is not liable when the plaintiff has contributed to his injury by his own negligence. Margolius *v.* Muldberg, 88 N. Y. Supp. 1048; Reiner *v.* Jones, 56 N. Y. Supp. 423.

that followed the landlord was not held.[70] Plaintiff's contributory negligence relieves defendant of liability.[71]

**85. Same — Within What Time After Notice Should Landlord Repair.**

The time allowed a landlord, after notice, for making repairs is like that allowed an employer who has agreed specially to cure a defect endangering the safety of his employee.[72] So, if a landlord undertakes to remedy or repair a known and specific danger existing on the premises when and before the demise was made, he assumes responsibility for any injury caused by the defect until he shall have had a reasonable time to repair, provided the person concerned is careful meantime to avoid the danger.[73]

**Same — Statutory Direction to Repair — Time Limit — Effect.**

A statute required a landlord to alter his building so as to secure the admission of sufficient light, and gave him a year in which to make the alteration. It was held that the death of his lessee, caused by the existence of the old order of things, did not make him liable, the year not having expired.[74] In other words, in order to conform to the statute, there was no obligation on the landlord to make the change immediately, but only not to delay making it beyond the limit of time.

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70 Purcell *v.* English, 86 Ind. 34. See also Woods *v.* Cotton Co., 134 Mass. 357.

71 See note 62, *supra.*

72 Stillwell *v.* Louisville Land Co., 22 Ky. 785.

73 Stillwell *v.* Louisville Land Co., *supra.*

74 Ziegler *v.* Brennan, 78 N. Y. Supp. 342.

**86. Same — Injuries Caused in Repairing — Where Liability Rests.**

When a landlord undertakes to do a work which, in the ordinary mode of doing it, is a nuisance he is liable for any injuries that may result from it to others — except the contractor and his servants — even where the work is done by a contractor and the latter employs his own servants. But when the work is *not* a nuisance in itself, and the injury results from the negligence of the contractor or his servants in the execution of it, the contractor alone is liable, unless the landlord was in default by employing an unskillful and improper person as a contractor.[75]

**Same — Defective Fire-escape — When Inefficiency Not to be Made a Question.**

A fire-escape requirement will not benefit the administrator when the death of his intestate could not have been averted by means of the appliance whether efficient and in place or not; the evidence showing that the deceased could not have been in a way to use it in any event.[76] Nor when — there being no fire or alarm of fire — the intestate had gone out upon the apparatus without reason or necessity.[77]

**87. Same — Failure in Statutory Duty — Private Action — Effect.**

Failure to perform a duty imposed by statute, when, as a consequence, an injury results to a private per-

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75 Cuff *v.* Railroad Co., 35 N. J. Law, 17. And see Boss *v.* Jarmuluski, 81 N. Y. Supp. 400, where a subcontractor had deposited iron work in a hallway in an apartment-house.

76 Weeks *v.* McNulty, 101 Tenn. 495.

77 Wiley *v.* Mullody, 78 N. Y. 310.

son, is evidence upon the question of negligence against the party charged with the latter.[78] But it is not conclusive evidence in that connection.[79] On the other hand, the effect of a certificate of efficiency issued to a person on whom rests the duty of equipping his building with a fire-escape protects only against the penalty.[80] But the party charged is responsible for only his own shortcomings. So, in a case where the building had been furnished with a fire-escape, but the door giving access to it had been locked by the tenant so that a servant of his, having no alternative but the window, jumped out and was injured. It was held here that the landlord was not the person responsible.[81] The fastening firmly of a window way to a fire-escape does not render the landlord liable, provided the glass is easily to be broken so that one can make his exit by efforts in that manner to save himself.[82]

### 88. Same — One Who is Both Servant and Occupant — Landlord's Duty.

Where the proprietor does not reside on the premises it is for the advantage of all concerned often for him to have someone there to represent him. In the "Tenement-House Act" it is made obligatory that he, either in person or thus by substitute, reside in the building on requirement from the tenement-house department, provided over eight families are living

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78 Jetter *v.* Railroad Co., 2 Abb. Dec. (N. Y.) 458; McGrath *v.* Rico, 63 N. Y. 523; Massoth *v.* Canal Co., 64 N. Y. 524; Wiley *v.* Mulledy, 78 N. Y. 310; Kneupple *v.* Ice Co., 84 N. Y. 488.

79 McRichard *v.* Flint, 114 N. Y. 222.

80 Snyder *v.* Boubright, 123 Fed. 817.

81 Sewell *v.* Moore, 166 Pa. St. 570.

82 Huda *v.* Glucose Co., 154 N. Y. 474.

there.[83] In this connection it is to be said that to a servant of the landlord, employed about the building and occupying an apartment there, the landlord owes no such duty as he does to a person who holds an apartment of him as a regular tenant.[84] But it has been held also that if a person employs a domestic servant and assigns her a lodging-room there is imposed upon him the duty of seeing to it that the latter is in a good condition, so that there be no probability of her suffering in health as the result of occupying it.[85]

### 89. Duty of Apartment-holder to Proprietor — Mode of Occupancy — Nuisance.

A wrong which arises from the unreasonable or unlawful use by a person of his own premises, or from his own improper, indecent, or unlawful personal conduct working an obstruction of or injury to the right

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83 "Whenever there shall be more than eight families living in any tenement-house, in which the owner thereof does not reside, there shall be a janitor, housekeeper, or some other responsible person who shall reside in said house and have charge of the same, if the department charged with the enforcement of this act shall so require." N. Y. Tenement-House Act, § 111.

84 McQuade was employed by the defendant, Emmons, by the month and as compensation for the services to be rendered by him was to be given a stipulated salary and the use of a house for himself and family. The court proceeds: "'Many servants,' says Mansfield, L. C. J., in King *v.* Stock (2 Taunt. 339), 'have houses given them to live in as porters at park gates. If a master turns away his servant does it follow that he cannot evict him till the end of the year?' In the same case Lord Ellenborough asks, 'If a man assigns to his coachman the rooms over his stable does he thereby make him his tenant?' It is abundantly clear that the claimant, by his own showing makes no case of which the justice could take cognizance under the act concerning landlords and tenants." McQuade *v.* Emmons, 38 N. J. Law, 397; Schick *v.* Fleischauer, 49 N. Y. Supp. 962.

85 Collins *v.* Harrison, 25 R. I. 489.

of another is a nuisance.[86] Thus, if a person uses for purposes of debauchery an apartment taken by him under demise from a lessor unaware of and not consenting to such use he becomes liable for damages to such lessor, and the latter would not be required to prove a special damage.[87]

**Same — Interference With Fellow Tenant to the Injury of the Lessor.**

If a man is guilty of interference with the tenants of another so as to disturb the enjoyment, and there results a loss of rent to the landlord, the latter is entitled to damages from the guilty one.[88] And it would be the same if the disturber was himself a tenant of a portion of the same building with the tenant interfered with.[89] However a merely temporary disturbance is not irreparable mischief, so no recovery would follow such.[90]

**90. Relation of Landlord and Tenant — Resumption of Subject.**

The law of landlord and tenant, so far as concerns the creation of the tenure and its close by lapse of time was considered herein briefly in "Part One"; close through other cause was reserved until now for the reason that parties to the smaller demises are the ones most likely to seek counsel on the subject of a summary close of the relation. The same brief method will be pursued here. It is to be added, in this con-

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86 Sullivan *v.* Waterman (R. I.), 39 Atl. 243.
87 Sullivan *v.* Waterman, *supra.*
88 Taylor's Landlord & Tenant, 173.
89 Goodell *v.* Lassen, 49 Ill. 145.
90 Goodell *v.* Lassen, *supra.*

nection, that close by surrender was postponed until now because as we saw in the other book, surrender by a lessee is hardly possible when there are sublessees to be consulted.[91]

**Surrender — Actual — By Implication.**

Surrender means the yielding of the estate to the landlord so that the leasehold interest becomes extinct by agreement.[92] This may take place deliberately and by mutual consent, or result from some act or omission by the tenant that works a breach of condition. But surrender requires the landlord's consent.[93] The tenant may abandon the premises, but unless the landlord consents it is no surrender and the obligation to pay rent remains.[94]

**91. Same — Consent by Implication.**

Such a consent may take place by implication. If the tenant presents the key to the landlord and the latter fails to reject it, this, being symbolic of a passing back of the possession to the landlord, might be regarded, in some cases, as a completed surrender; so too might the landlord's proceeding to put a new tenant into the premises. But neither of these instances is one of surrender necessarily; for the facts may not be inconsistent with the landlord's purpose to keep the old tenant responsible.[95]

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91 See §§ 39, *supra*, and 123, *post*.

92 Beall *v.* White, 94 U. S. 382.

93 Stewart *v.* Sprague, 71 Mich. 50.

94 3 Starkie on Evidence, § 1518.

95 It is said that after the surrender of the keys the landlord put up signs to rent the property and that it cleaned out the building. Upon the abandonment of the leased premises by the tenant it was the

Same — Nonconcurrence of Sublessee.

The tenant's violation of any of his covenants contained in the lease, if the latter includes a right of entry predicated on such violation, needs only reoccupation by the landlord to make the case one of surrender.[96] He has the option. And it would be so even if there were a sublessee and he did not concur.[97] Usually by statute a surrender results when fire has rendered the premises untenantable, provided the tenant notifies the landlord within a reasonable time;[98] but a stubborn sublessee may prevent this surrender.[99]

92. Same — Sale of the Premises — Bankruptcy of Tenant.

A sale of the demised premises does not bring the lease to an end,[1] but results only in replacing the old landlord by the purchaser, the old tenant still remaining bound.[2] And, except where some statute provides

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landlord's right and duty to take charge of the premises, preserve them from injury, and — if it could — rerent them, thus reducing the damages for which the lessee was liable. West Side Auction House Co. *v.* Conn. Mut. L. Ins. Co., 186 Ill. 156.

96 A condition in a lease that upon a certain contingency the lease shall be canceled implies that the contingency cancels it *ipso facto*, any further act of the tenant not being required. Bouder *v.* Geisler, 94 N. Y. Supp. 2.

97 A sublessee takes, of course, subject to the terms of the agreement between his lessor and the owner, and cannot complain if his possession is lost as the result.

98 Decker *v.* Martin, 52 N. Y. Supp. 172.

99 Smith *v.* Sounekalb, 67 Barb. 66.

1 Foley *v.* Constantine, 86 N. Y. Supp. 780. But where a lease contained an express stipulation that the landlord might cancel it at the end of any year by giving sixty days' notice if he sold or contemplated building, it was held that the tenant holding over after the notice could be ejected. Miller *v.* Levi, 44 N. Y. 490.

2 Griffin *v.* Barton, 49 N. Y. Supp. 1021.

that it does, a lease does not terminate when the tenant becomes bankrupt and a receiver takes over his affairs.[3]

**Lapse of Time — Notice to Quit.**

In contemplation of the end of a tenancy under a lease for a short term a notice equal in time to the regular intervals between rent days ought to be served,[4] except where the tenancy is at will or at sufferance. In the cases of these two tenancies none is required, unless under the statute of some particular State.[5] It is best, however, to give the notice even where it is not obligatory; if only so that the tenant may have a reasonable time — as he ought to have — to take away his belongings.[6] As to the form of the notice, that is immaterial; provided it is to the point and so worded that the tenant is not liable to misunderstand it.[7]

**93. Tenant Holding in Wrong of the Landlord — Breach of Rent Condition.**

A tenant sometimes holds on to the possession without right. It is so if he remains on the premises after the expiration of his term and contrary to the wishes of his landlord; and it is so also if he remains during the term but after forfeiting his right to the premises

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[3] Woodruff *v.* Harding, 77 N. Y. Supp. 969. But see N. Y. Code Civ. Proc., § 2253 (4).

[4] Huyser *v.* Chase, 13 Mich. 98; Burns *v.* Bryant, 31 N. Y. 453; Klingenstein *v.* Goldwasser, 58 N. Y. Supp. 342.

[5] Moore *v.* Smith, 56 N. J. Law, 159. But see Rich *v.* Bolton, 46 Vt. 84.

[6] A tenant at will or at sufferance has a reasonable time in which to remove his goods. 10 East, 261, note to Burn *v.* Rawlings; Strickland *v.* Spencer, 6 East, 120.

[7] Cook *v.* Creswell, 44 Md. 581.

through breach of a condition.[8] It is needless to add that in most instances such a breach is referable to the condition to pay rent.[9] And it is a breach still if the default is only as to a part of the rent, the other part having been paid already.[10] Acceptance of rent after the forfeiture does not waive the latter if the rent accepted became due before.[11]

**Holding Over After Notice to Quit.**

In New York a tenant is liable for double rent for all the time he remains in after expiration of any notice he may have given of intention to quit.[12] But this has reference only to tenancies not of a fixed

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8 It is, of course, for the landlord to say whether the breach shall or shall not terminate the lease. Williams *v.* Chemical Engine Co. (N. J.), 63 Atl. 990.

9 If he has expressly covenanted to pay taxes, assessments, water rates, insurance, or anything of the kind payments in such a direction are *pro tanto* in lieu of rent, and a withholding of such a payment would be a default in rent payment and liable to the same consequences. In New York it would be so by statute. See N. Y. Code Civ. Proc., § 2253. But summary proceedings, it has been said, will not lie in such a case when the lease was silent on this point when express as to their lying for nonpayment of rent proper. Bixby *v.* Casino Co., 35 N. Y. Supp. 677. In the absence of any stipulation to the contrary in the lease payment of taxes, etc., is the obligation of the landlord solely, of course. McAdam Landlord & Tenant (2d ed.), § 89; Darcey *v.* Steger, 50 N. Y. Supp. 638.

10 Belding *v.* Blum, 88 N. Y. Supp. 178.

11 Morrison *v.* Smith, 90 Md. 76.

12 New York 4 Rev. Stat. (8th ed.), p. 2457, § 10. This relates only to a tenancy where the term is indefinite and the tenant has the right to, and seeks by notice to, terminate the tenancy. Sections 7, 8, and 9 of the New York statute relate to tenancies at will and at sufferance only; and that is the construction given it by the authorities. When the term is definitely fixed the tenancy expires *ex vi termini*, and the giving of notice to quit is a work of supererogation, which furnishes no rights and creates no liabilities. Regan *v.* Fosdick, 43 N. Y. Supp. 1103.

nature; for when the term is a fixed one the notice would be uncalled-for, since the tenancy would expire without it.[13]

**94. Holding Over Involuntarily.**

The authorities are at odds as to whether sickness in tenant's family excuses so far as the consequences of holding over are concerned;[14] but there is no question if the remaining in has been in obedience to a notice from the health department or,[15] as now prob-

[13] To the knowledge of the tenant, the notice given by the tenant must have been accepted by the landlord, according to judicial construction of the original English statute (11 Geo. II, chap. 19, § 18) after which this provision is modeled. In Johnstone *v.* Huddlestone the tenant remained in possession and no act was done by the landlord to show that he considered the tenancy at an end. It was urged that the landlord adopted the notice to quit, but the court (Bailey, J.), said: "Assuming that the assent of the landlord to such a notice would in any case be sufficient to make it binding upon him, it ought to be shown that notice of that assent was given to the tenant. For until that assent was notified to the tenant the notice to quit was no more than a proposal made by the latter to quit at a certain time; by law he could not compel the landlord to accept. * * * I think that the legislature did not intend to punish the tenant for his caprice, but to reimburse the landlord for any injury he might sustain by losing his bargain with a new tenant." It was also said that if the contract was one where a writing was required a parol acceptance would not suffice, for the Statute of Frauds requires that such a surrender be in writing. Johnstone *v.* Huddlestone, 4 B. & C. 922.

[14] Regan *v.* Fosdick, 42 N. Y. Supp. 471; Same case, 43 N. Y. Supp. 1103. Read the dissenting opinion of Vann, J., in Herter *v.* Mullen, 159 N. Y. 28. To the contrary read the prevailing opinion in the latter case.

[15] A covenantor is excused from performing his covenant if an act of law stands between him and the performance, "for it would be absurd to require a man to do that which the law forbids." Brewster *v.* Kitchell, 1 Salk. 198; Brick Church *v.* Mayor of N. Y., 5 Cow. 538; Jones *v.* Judd, 4 N. Y. 411; Lorillard *v.* Clyde, 142 N. Y. 456; Heine *v.* Meyer, 61 N. Y. 171; Wolfe *v.* Howes, 20 N. Y. 197; Regan *v.* Fosdick, 43 N. Y. Supp. 1103.

ably, the tenement-house department.[16] To leave to the tenant's own sole volition, it has been said, his remaining or not in such a case would introduce an uncertainty into a rule whose chief value lies in its certainty. The consequent confusion would be great; excuses be forthcoming and their sufficiency left to the doubtful conclusions of a jury. No landlord ever would know when he could promise safely possession to a new tenant.[17] To quote Regan v. Fosdick, *supra:* "The theory upon which overholding tenants are held to have renewed their tenancies at the option of the landlord is that they cannot allege their own wrongdoing in defense."[18]

95. **Ejectment of Tenant — Landlord's Own Act.**

If a lease is terminated by nonpayment of rent[19] and, after duly giving notice to the tenant, the landlord in the tenant's absence enters and takes possession peacefully, he may maintain that possession provided he uses no more force than is necessary.[20] And if a landlord, the term having expired, takes possession by force not excessive, this affords the tenant no action against him unless there is some statute giving it.[21] Indeed, a landlord may actually eject by force a tenant

16 "All the rights and powers possessed by the health department of the city of New York with respect to the sanitary inspection of tenement-houses are hereby conferred upon the tenement-house department." Charter of Greater New York, § 1340.

17 Haynes *v.* Aldrich, 133 N. Y. 287; Herter *v.* Mullen, 41 N. Y. Supp. 708.

18 Regan *v.* Fosdick, 43 N. Y. Supp. 1102.

19 When a lease does not provide for re-entry on nonpayment of rent, or forfeiture, the mere nonpayment does not work a forfeiture of itself.

20 Smith *v.* Building Ass., 115 Mich. 340.

21 Vinson *v.* Flynn, 64 Ark. 453.

holding over after the end of his term and having been notified duly to quit. As to the degree of force permissible, that is to be determined according to the facts of the case.[22] Statute protects the tenant against outrage in New York in so far as the question of force is concerned, as will appear in the following paragraph.

**96. Same — Restraint Upon Landlord's Use of Force.**

The award of triple damages in New York when there has been an invasion of the right of property can be made only where a person has been disseised, ejected, or put out of possession of real property in a forcible manner.[23] Since the case of Willard v. Warren[24] it has been settled in that State that such an award cannot be sustained unless the act complained of is something more than a mere trespass upon the property.[25] In that case the court said that in order to constitute a forcible entry the entry must be riotous,

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22 Low *v.* Elwell, 121 Mass. 309.

23 N. Y. Code Civ. Proc., § 1669.

24 Willard *v.* Warren, 17 Wend. 257. In the absence of statute the tenant is not without remedy. "For the unlawful eviction of a tenant by a landlord before the expiration of his term the measure of damage of the tenant is at least the rental value of the premises." Shuman *v.* Smith, 28 S. E. 448.

25 In such a civil action the complaint must state facts sufficient to constitute a crime under section 654 of the Penal Code. That provides that, "a person who unlawfully and wilfully destroys or injures any real or personal property of another" shall, in addition to the punishment prescribed, be "liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property." Willard *v* Warren, 17 Wend. 257. The word "wilfully" in the statute means something more than a voluntary act, and more, also, than an intentional act that in part is wrongful. It includes the idea of an act intentionally done with a wrongful purpose, or with a design to injure another, or one committed out of mere wantonness or lawlessness. Hass *v.* Stevens, 128 N. Y. 128.

or personal violence must be used, or there must be threats or menaces of violence; or other circumstances must exist inducing terror in the occupant of the premises. It has been held that the breaking of a lock of an outhouse in the possession of the tenant did not amount to a forcible entry, and this view has been taken repeatedly since.[26] In the case referred to the entry was made peaceably in the absence of the tenant and without the putting of the latter into any peril or even fear.[27]

### 97. Informal Modes of Expulsion Objectionable — Formal Modes — Forcible Entry and Detainer — Summary Proceedings.

There is much to be said against any principle under which the landlord may recover possession by methods

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[26] Carter *v.* Anderson, 11 N. Y. Supp. 883; Morgan *v.* Powers, 83 Hun, 298; Bach *v.* New, 48 N. Y. Supp. 777; Marchand *v.* Haber, 37 N. Y. Supp. 952.

[27] Yeomans *v.* Nichols, 81 N. Y. Supp. 500. In Mussey *v.* Scott, 32 Vt. 82, it was decided that one having the right, as against a wrongful occupant, may enter and repossess the premises — the occupant not being there actually either in person or by representation — even if he break down a door in order to do so. The court quoted with approval Collamer, J., in Beecher *v.* Parmele, 9 Vt. 356, thus: "It appears to us most reasonable to allow any man peaceably to assert his legal right by his own act without driving him to an action." (See also Wood *v.* Phillips, 43 N. Y. 152.) The same court mentioned by way of contrast Dustin *v.* Cowdry, 23 Vt. 601, where the entry was violent and the occupant and family thrown out into the public highway, with all their goods and effects, during an inclement season of the year, and in comment said: "The manner of the entry was clearly illegal and in violation of the statute which forbids the use of force in *entering* or *detaining*." But Breese, C. J., in Dearlove *v.* Herrington, 70 Ill. 251, would appear to deem the one manner as bad as the other in contemplation of modern law, thus: "The common-law right to enter and to use all necessary force to obtain possession from him who may unlawfully withhold it was held in Reeder

more or less violent, making a law of himself, and, on the other hand, ejectment, the only alternative at common law, offers a fine field for declamation to those who denounce the law for its delays. Nothing well can be more exasperating than to own property occupied by somebody who will neither get out nor pay for the occupation. In many of the States provisions at once for the protection of a tenant from a violent landlord and a landlord from a persistent and defaulting tenant are combined under the common designation, Forcible Entry and Detainer.[28] This providing, in a single act, for remedies distinct from each other and to benefit persons of antagonistic classes is open to criticism,[29] and in New York and elsewhere a further method of regaining possession, one more to the purpose, is in operation, known as Summary Proceedings.[30]

### 98. Dispossessing an Occupant by Legal Method.

Within our narrow scope a subject so purely statutory as this hardly could be given full consideration, differing as the statute of one State must from that of another. Little more than a word here and there to reflect the general spirit merely would be possible.

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v. Purdy, 41 Ill. 279, to have been taken away by our statute of Forcible Entry and Detainer."

[28] "An entry shall not be made into real property, but in a case where entry is given by law; and in such a case only in a peaceable manner, not with strong hand, nor with a multitude of people. A person who makes a forcible entry forbidden by this section or who, having peaceably entered upon real property, holds the possession by force, and his assigns, undertenants and legal representatives, may be removed therefrom as prescribed in this title." N. Y. Code Civ. Proc., § 2233.

[29] Jones on Landlord and Tenant, § 562.

[30] N. Y. Code Civ. Proc., § 2231.

The sole object of the proceeding is possession;[31] in no case may it be invoked for the recovery of rent,[32] and this is so notwithstanding that the default of the tenant in the payment of rent is the most frequent cause underlying the resort. In case of an offending in respect of this or any other statutory cause the proceeding may be employed to dispossess occupants by virtue alike of certain and uncertain tenancies.[33] And the fact that a tenant is under age does not put him beyond reach of the proceeding, since a guardian *ad litem* may be appointed for him and the required steps toward repossession be pursued against him then as in the case of a tenant of full age.[34]

99. Summary Proceedings — General Significance of the Term — Requisites.

Before going into the subject in its particular aspect here the question arises naturally, what general sense is attached to "a summary proceeding?" It is not an action,[35] but, rather, the pursuit of a remedy that a

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31 McAdam Landlord and Tenant, Vol. 3, p. 142; Harley *v.* McAuliff, 26 Mo. 525.

32 Campbell *v.* Nixon, 2 Ind. App. 473; Clarke *v.* Shaw, 24 Tex. 242. But see Ellis *v.* Fitzpatrick, 118 Fed. 430, where it is said that the sufficiency of the complaint is not impaired by an asking in the latter part for a recovery of rent.

33 N. Y. Code Civ. Proc., § 2231.

34 Boylan *v.* McAvoy, 29 How. Pr. 278. And see McCoon *v.* Smith, 3 Hill, 147, where in ejectment infant defendant set up adverse title.

35 "By a summary proceeding I mean principally such as is directed by several acts of parliament (for the common law is a stranger to it except in the case of contempts) for the conviction of offenders and the infliction of certain penalties created by these acts of parliament. In these there is no intervention of a jury, but such person only as the statute has appointed for his judge — an institution designed professedly for the greater ease of the subject by doing him speedy justice and by not harassing the freeholders with frequent and trouble-

judicial officer may give only through powers specially conferred upon him in that connection.[36] Necessarily a judge can do nothing unless he has jurisdiction of the cause,[37] and here jurisdiction arises only where the case as first presented[38] is within the conditions set forth in the act specially conferring his powers.[39] Hence, notwithstanding that the New York Code of Civil Procedure declares that its provisions are to be liberally construed,[40] these particular provisions must, in the nature of things, be construed strictly as to all matters that go to create jurisdiction.[41] Otherwise the judicial officer is no judicial officer, and therefore not in a way to entertain the case, and this even with the consent of both parties.[42] But jurisdiction once being

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some attendance to try every minute offense." Blackstone's Com., Book IV, § 280.

36 "It is necessary for courts of justice to hold a strict hand over summary proceedings before magistrates, and I never will agree to relax any of the rules by which they have been bound. Their jurisdiction is of a limited nature, and they must show that the party was brought within it." Kenyon, L. C. J., in Rex *v.* Stone, 1 East, 639.

37 "Jurisdiction is the right to hear and determine." Field, J., in Windsor *v.* McVeigh, 93 U. S. 274.

38 Marchand *v.* Haber, 37 N. Y. Supp. 950.

39 "In inferior courts the jurisdiction is special or limited. Such courts take only that jurisdiction which is expressly conferred, and it must be exercised according to prescribed practice. Such jurisdiction is neither implied nor presumed, but must be found in the statutes. In superior courts of general jurisdiction the rule is otherwise; for while bound by prescribed procedure these, as courts of record, have certain inherent powers; hence their jurisdiction is presumed except, perhaps, when they act in purely statutory proceedings where adherence (to the statute) is necessary to jurisdiction." McAdam Landlord and Tenant, Vol. 3, p. 28.

40 N. Y. Code Civ. Proc., § 3345.

41 Power in a court of limited jurisdiction is never to be presumed, but must be made to appear affirmatively. Matter of Hawley, 104 N. Y. 250; English *v.* Smock, 34 Ind. 115, 7 Am. Rep. 215.

42 Beach *v.* Nixon, 9 N. Y. 35.

accomplished in a case, the liberal construction of statutes provided by the Code[43] are applied properly to the conduct of the subsequent proceedings.[44]

### 100. Same — Application — By Whom to be Made.

The applicant may be the lessor[45] of demised premises, the purchaser on execution[46] or foreclosure sale,[47] the person forced out of possession or excluded, or the lawful owner of property intruded or squatted upon,[48] or the agent,[49] assignee,[50] or legal representative[51] of

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43 N. Y. Code Civ. Proc., § 3345.

44 Birdsall *v.* Phillips, 17 Wend. 464.

45 N. Y. Code Civ. Proc., §§ 2231, 2235. This includes a lessor of property under contract of sale (Miller *v.* Levi, 44 N. Y. 489), but not of property sold (Boyd *v.* Sametz, 40 N. Y. Supp. 1070), when the tenant holds over. It also includes grantee's reversionary interest no matter whether derived by voluntary conveyance or judicial sale. Lang *v.* Everling, 23 N. Y. Supp. 329.

46 N. Y. Code Civ. Proc., §§ 2232, 2235. And purchaser under foreclosure of mechanic's lien. Lang *v.* Everling, *supra.*

47 N. Y. Code Civ. Proc., §§ 2232, 2235. But only when the foreclosure was by advertisement. Greene *v.* Geiger, 61 N. Y. Supp. 524.

48 N. Y. Code Civ. Proc., §§ 2232, 2235.

49 Under the statute (§ 2235) the application may be made by the agent in his own name, if he describes himself in the petition in sufficient words. Case *v.* Porterfield, 66 N. Y. Supp. 337. The actual landlord may, too, do so in *his* own name when the lease was made by the agent without stating his representative capacity or the tenant's being aware of it. Long *v.* Poth, 37 N. Y. Supp. 670.

50 Wetterer *v.* Souherious, 49 N. Y. Supp. 1043; Curran *v.* Weiss, 26 N. Y. Supp. 8. "The tenant claims that Gerson Siegel, and not the petitioner, was the landlord of the premises when the rent was demanded and the proceedings were brought; but this contention is not supported by the evidence, from which it appears, on the contrary, that the lease was assigned by Mr. Siegel to the petitioner prior to the time before mentioned, by an instrument in writing. The petitioner was, therefore, the real party in interest, and whether or not he was a 'dummy,' as claimed, is of no moment." Sheridan *v.* The Mayor, etc., 68 N. Y. 30.

51 The word here has a significance covering more than executors and administrators. See note 45, *supra.*

any of these.[52] If the occupancy is for lewd purposes an owner or tenant of neighboring property may be the applicant where the landlord is slow to act.[53] "Landlord," as used in these connections, describes not only the owner but as well one who holds of the owner and sublets;[54] for such a one is often constrained to make use of the proceeding to remove his own tenant. Indeed it is possible for the lessee to proceed thus against the owner as landlord of the latter; having first taken the property under a lease by the provisions of which he is to pay for it at the end of the term.[55]

### 101. Same — To Oust Delinquents — History of the Proceeding in New York.

An outline of the history of these proceedings in New York was given in the course of the decision in Peabody v. Building Society[56] by the Court of Appeals. "Summary proceedings to recover the possession of land were first brought into existence in New York by chapter 194 of the Laws of 1820 and were limited to two cases: first, the expiration of the tenants' term; second, default in the payment of rent. It was not coextensive with the landlord's right to maintain ejectment and could not be maintained for a breach of any other covenant of the lease than that to pay rent

52 It might be stated just here that an infant landlord may bring the proceedings through a guardian *ad litem*. Likewise they can be brought against an infant tenant, such a guardian being aptly appointed. Jessurum v. Mackie, 24 Hun, 624; affd., 86 N. Y. 622.

53 N. Y. Code Civ. Proc., § 2237.

54 It would be so, of course, in the case of our "proprietor" who holds of the "owner" and lets to the "apartment holder."

55 Bostwick v. Frankfield, 74 N. Y. 207.

56 Peabody v. Building Co., 188 N. Y. 103.

(Oakley v. Aspinwall, 15 Wend. 226; Beach v. Nixon, 9 N. Y. 35). The scope of these proceedings has, from time to time, been enlarged so as to include other cases, such as those of a purchaser at a sale on execution or on a foreclosure by advertisement and the like, but it has never been enlarged so as to include all cases where ejectment would lie."

102. Same — Present Scope of the Remedy in New York.

Summary proceedings as known in New York are resorted to to dispossess a person occupying real estate in wrong of another person who is entitled to the possession. Although there is no great variety in the steps to be taken to ensure the remedy, the latter is aimed at three principal classes of offenders, differing class from class in respect of the origin of the occupancy, and in respect of the manner of maintaining it. Thus,

*First.* When the origin was the relation of landlord and tenant and the tenant remains in against the landlord's consent after the relation properly has ceased.[57]

*Second.* When the property has been sold under legal process and the occupant holds over in defiance thereof — where a person after agreeing to work another's property on shares will not yield possession at the other's desire on the expiration of the agreement — a squatter.[58]

*Third.* This class combines the other two with the difference that the possession is maintained by force.[59]

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57 N. Y. Code Civ. Proc., § 2231.

58 N. Y. Code Civ. Proc., § 2232.

59 N. Y. Code Civ. Proc. § 2233.

### 103. Same — Particular Reference to Landlord and Tenant — Remedy When Available.

The particular reference here is to the redress offered a landlord kept out of his possession by a tenant wrongfully: for the remedy is open to a landlord[60] only and even to him in no case where the offender's occupancy has not originated by virtue of a lease express or implied.[61] Again, the proceeding will not restore possession to a landlord for breach by his tenant of every express condition contained in the lease;[62] but only for some act or omission on the tenant's part (or some state of affairs referable to him) which this particular statute[63] specifies as a ground for its being invoked. Besides, there is the point of notice; for, if holding over is the ground of the proceeding and the tenancy was determinable by a notice to quit that notice must have been given,[64] and if the ground is

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[60] The proceeding is not open to a mortgagee by virtue of a power of attorney to collect rents to be applied on the debt secured. Matter of Horsley, 9 N. Y. Supp. 752. Nor to one who has turned her house over to relatives, in consideration of their boarding her, so long as she cares to have the arrangements continue. Mathews *v.* Mathews, 2 N. Y. Supp. 121.

[61] For instance where the occupant became such under an agreement to purchase which subsequently he failed to do. Burkhart *v.* Tucker, 59 N. Y. Supp. 711. Or an interloper after tenant's departure and occupying without his consent. People *v.* Hovey, 4 Lans. 86. Or one occupying as boarder and lodger. Oliver *v.* Moore, 6 N. Y. Supp. 413.

[62] Beach *v.* Nixon, 9 N. Y. 35; Oakley *v.* Schoonmaker, 15 Wend. 226. But see Miller *v.* Levi, 44 N. Y. 489.

[63] N. Y. Code Civ. Proc., § 2231; McDonald *v.* McLaury, 17 N. Y. Supp. 574; DeWitt *v.* Pierson, 112 Mass. 8.

[64] N. Y. Code Civ. Proc., § 2236; Cox *v.* Sammis, 68 N. Y. Supp. 203. When the tenancy has a fixed term no notice to quit need be given. When it is at will or at sufferance a month's notice may be given (L. 1896, chap. 547, § 198), not necessarily to expire at the end of any

nonpayment of rent the tenant is entitled to three days' notice in writing, to pay or vacate, before institution of the proceedings[65] unless there has been a personal demand,[66] in which case this last notice need not be in the alternative.[67]

**104. Same — Causes Entitling a Landlord to the Remedy.**

*First.* Holding over by the tenant against the landlord's consent after the expiration of the term.[68]

*Second.* Holding over by the tenant after default in payment of rent agreed to be paid under the lease, the rent having been duly demanded.[69] And here it is to be remarked that the demand must be made personally on the tenant.[70]

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particular month, however. Peer *v.* O'Leary, 28 N. Y. Supp. 687. In New York and Brooklyn a monthly tenancy requires a notice of at least five days, unless it expires on the first day of May. L. 1882, chap. 303, as amended by L. 1889, chap. 357. And see Hedden *v.* Nederburg, 55 N. Y. Supp. 613.

65 N. Y. Code Civ. Proc., § 2231; Heinrich *v.* Mack, 56 N. Y. Supp. 155.

66 N. Y. Code Civ. Proc., § 2231; Tolman *v.* Neading, 42 N. Y. Supp. 217.

67 Rogers *v.* Lynde, 14 Wend. 173.

68 Holding over by a sublessee has the same effect as if the lessee himself held over. Power Co. *v.* Manufacturing Co., 28 N. Y. Supp. 662; Hunt *v.* Wolfe, 2 Daly, 298; Bacon *v.* Brown, 9 Conn. 334; Kower *v.* Gluck, 33 Cal. 401; Diller *v.* Roberts, 13 Serg. & R. 60.

69 Zinseer *v.* Herman, 52 N. Y. Supp. 107. If the lease stipulates that after an instalment of rent shall have been overdue and unpaid a certain time the landlord may, at his option, terminate the tenancy; a demand, after such default, for the possession is an exercise of the option, even though by that time another instalment has become overdue — though not so long — and is demanded at the same time. McCrosky *v.* Hamilton, 108 Ga. 640.

70 Even though up to that time it had been the tenant's custom to seek the landlord in order to pay. Rea *v.* Eagle Transfer Co., 201 Pa. St. 273.

*Third.* Default by the tenant for sixty days in the payment of any taxes or assessments levied on the premises, payment of which is an obligation on him by express words in the lease.[71] Here, it is to be remarked, acceptance of rent by the landlord works no waiver.[72]

*Fourth.* When a tenant, under a lease for three years or less, has taken the benefit of the insolvency laws or has been adjudged a bankrupt.[73]

*Fifth.* When the tenant is using the premises as a bawdy house[74] or for some other illegal purpose.[75]

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71 Water rates are included in the category of obligations of the landlord which the tenant may assume by covenant in the lease. It ought to be explained, though, that if there is but the one meter in the house the landlord is not to set off against a tenant what he decides arbitrarily was the proportion due for what such tenant may have consumed. Bristol *v.* Hammacher, 62 N. Y. Supp. 517. But the landlord may attach a properly adjusted meter to the pipe supplying the tenant alone and make his estimate of charge accordingly as the tenant's proportion of the whole charge paid. Myers *v.* Reade, 98 N. Y. Supp. 620.

72 See note 97, *supra.*

73 But when the tenant's receiver in bankruptcy takes possession and pays rent the lease does not terminate. Woodworth *v.* Harding, 77 N. Y. Supp. 969.

74 Goelet *v.* Lawler, 37 N. Y. Supp. 691; Maine Stat., 1858, chap. 54, § 3. And see Small *v.* Clark, 97 Me. 304; Mass. Gen. Stat., chap. 87, § 8. The object of such an enactment was for the benefit and protection of the lessor, to enable him to get rid of a tenant using the premises for an unlawful purpose, and to avoid the penalty imposed by the following section upon a lessor who knowingly permits his estate to be occupied for a purpose prohibited by law. Way *v.* Reed, 88 Mass. 364.

75 The evil entitling a landlord to summary proceedings is not confined to the one description, but includes any illegal trade, manufacture, or other business. See subd. 5, § 2231, of the Code of Civil Procedure. In Conforti *v.* Romano the tenant was ejected on account of his tolerating as a subtenant a man guilty of the offense of selling liquor without a license. Conforti *v.* Romano, 98 N. Y. Supp. 194.

Finally, outside of enumerated causes, a tenant may have covenanted expressly to the effect that the landlord be at liberty to resort to proceedings for dispossession in the event of some named default.[76]

105. Same — Causes Entitling a Property Owner, as Such, to the Remedy.

In considering the second class of persons to be proceeded against the worker of land on shares may be passed by as outside of our subject, leaving for remark only the squatter and the recalcitrant possessor of property after title to the latter has changed hands through judicial sale.[77] This includes an execution sale, a mortgage sale — provided the foreclosure was by advertisement,[78] and a sale by way of enforcing a mechanics' lien.[79] But all legal formalities necessary to complete the passing of title must be shown by the petition to have been gone through with.[80] The proceeding may be urged against as well the debtor and anybody who holds the property through or under him.[81] Statutory notice of ten days, to expire before proceeding, is necessary.[82] The word "squatter" explains itself; one who occupies without law or license. Backed by neither he is a transpasser. He may pretend to right under a conveyance of some sort,

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76 *In re* Schoelkopf, 105 N. Y. Supp. 477; Chapin *v.* Billings, 91 Ill. 539.

77 N. Y. Code Civ. Proc., § 2235.

78 Only when foreclosure was by advertisement — otherwise the purchaser has a remedy by writ of assistance. Greene *v.* Geiger, 61 N. Y. Supp. 524.

79 Lang *v.* Everling, 23 N. Y. Supp. 329.

80 People *v.* McAdam, 84 N. Y. 287.

81 People *v.* McAdam, *supra*.

82 N. Y. Code Civ. Proc., § 2236.

to be sure, but unless the maker of such had title this would not avail him. But he is entitled to notice as above.[83]

**106. Same — Forcible Entry and Detainer.**

Another class of cases is that of Forcible Entry and Detainer,[84] "and it is to be observed of decisions in those cases that they are not in all respects strictly applicable to the case of an issue solely as to private rights. The proceedings under the statute in earlier days were in the nature of criminal, for the redress of a wrong to the public done by a breach of its peace.[85] The statute was not intended to confer rights.[86] The main object still is to preserve the public peace and prevent parties from asserting their rights by force or violence, though by gradual additions the remedy has become in effect a private as well as a public one. But the forms of proceeding and the rules of law which govern it remain to a great degree unchanged. Still there must be present, to secure conviction, proof of a wrong done the public. A mere trespass will not sustain the proceeding. There must be in the acts of him complained of an element of force or violence or terror to others."[87]

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[83] N. Y. Code Civ. Proc., § 2236.

[84] N. Y. Code Civ. Proc., § 2233.

[85] The origin of forcible entry and detainer was the need to correct the privilege allowed one with a right to maintain it by force. It was easy to imagine a right in line with a corresponding wish; and so it was, one statute succeeding another in this effort at correction. See Bacon's Abridg. Title — Forcible Entry and Detainer.

[86] To bring forcible entry and detainer for withholding rent may be regarded as a trespass. Draper *v.* Stouvenel, 35 N. Y. 507.

[87] Paragraph 106 of the text is quoted from the decision in Wood *v.* Phillips, 43 N. Y. 152.

### 107. Same — Conditions Under Which a Landlord May Proceed.

In order that this particular remedy may inure to the benefit of a landlord for the purpose of dispossessing the occupant the first condition is that there must exist between these parties the conventional relation of landlord and tenant.[88] That is, the relation must have originated by agreement between them,[89] either express or implied, and not by mere operation of law. Thus, a tenant at sufferance may be dispossessed by summary proceedings, because although, to be sure, nothing so specific as a lease has been entered into the relation is understood to exist. On the other hand, where a party who under treaty to purchase the premises has been allowed to enter and declines to leave upon the breaking off of the negotiations the relation would exist by operation of law, and it would require an action of ejectment to have him dispossessed.[90]

### 108. Same — Who May Be Proceeded Against as Tenants.

"A tenant or lessee at will, or at sufferance, or for part of a year, or for one or more years, of real property, *including a specific or undivided portion of a house or other dwelling,* and his assigns, undertenants, or legal representatives may be removed therefrom"

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88 To illustrate what is not the conventional relation — When by the terms of a lease the landlord on an expressed contingency, the happening or not of which was left for him alone to decide, might re-enter at his option. Penoyer *v.* Brown, 13 Abb. N. C. 82.

89 The relation of landlord and tenant must have arisen out of agreement rather than operation of law. See People *v.* Simpson, 28 N. Y. 55; Benjamin *v.* Benjamin, 5 N. Y. 383.

90 People ex rel. Williams *v.* Bigelow, 11 How. Pr. 83.

through resort to these proceedings.[91] As to undertenants, it should be remarked that they are necessary parties,[92] but not so the immediate family of the tenant, since the removal of the latter includes them.[93] If a tenant dies and his widow remains on the premises she is regarded as his assignee and so comes within the statute.[94] "Assigns" does not need to be explained, but its signification does not cover a stranger to the lease who has entered before its expiration without consent of the tenant.[95] An infant tenant may be proceeded against by first having a guardian *ad litem* appointed for him.[96]

### 109. Same—Petition—Jurisdictional Facts—Tenant Holding Over.

On the face of the petition there must be shown clearly the applicant's right to the remedy.[97] The

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91 N. Y. Code Civ. Proc., § 2231. One description of occupant mentioned in the section is omitted from the text purposely, a servant. The section gives to an employer, who has permitted the employee to occupy during the service, the use of the remedy to expel him at its expiration. It was needless since the provision expressly allows the expulsion to be made as well "in any other lawful manner."

92 Ward *v.* Burgher, 35 N. Y. Supp. 961. The undertenants are necessary parties. Schlaick *v.* Blum, 85 N. Y. Supp. 335. Assigns, undertenants, and legal representatives. Croft *v.* King, 8 Daly, 265. And see Drummond *v.* Fisher, 16 N. Y. Supp. 867. If the undertenants' names cannot be ascertained conveniently "John Doe" and "Richard Roe" may be used in lieu of them. See Croft *v.* King, *supra*.

93 McAdam Landlord and Tenant, Vol. 3, p. 13.

94 That is, if there has been no administration on the husband's estate. Michenfelder *v.* Gunther, 66 How. Pr. 464.

95 People *v.* Hovey, 4 Lans. 86.

96 Boylan *v.* McAvoy, 29 How. Pr. 278.

97 Jones on Landlord and Tenant, § 652a; People *v.* Matthews, 38 N. Y. 451; Potter *v.* Baptist Mission Soc., 52 N. Y. Supp. 294. In Hill *v.* Stocking, 6 Hill, 314, the court says in effect that there is reason for this requirement outside of dry law formalism; for it is putting

facts set out for this purpose are called "jurisdictional facts," because it is their appearance in it that imparts jurisdiction to the tribunal before which the proceeding is to be conducted.[98] They each and all must appear, too, by distinct averment and no one of them left to be inferred.[99] They include the applicant's title to or interest in the premises concerned,[1] the local situation of the latter,[2] the relations of the parties to each other in respect to them[3] and how such relations have come about,[4] the expiration of the lease, if it had a fixed term,[5] otherwise that petitioner by a notice to the other party, here substantially set out so that its validity may be seen,[6] requiring him to quit.[7] The

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no complainable hardship upon the petitioner to presume that the case he makes out for himself is the case most favorable possible for the attainment of the end he has in view. But he is confined to a statement of facts; evidence of facts or mere conclusions in such a petition being mere waste of words. A justice cannot by allowing an amendment aid an insufficient petition so as to give himself jurisdiction *nunc pro tunc*. Marchand *v.* Haber, 37 N. Y. Supp. 950.

98 Matter of Hawley, 104 N. Y. 250; Hill *v.* Stocking, *supra*.

99 Cohen *v.* Brossevitch, 67 N. Y. Supp. 1025; Hill *v.* Stocking, *supra*.

1 Schneider *v.* Leitzman, 11 N. Y. Supp. 434; Dougherty *v.* McMillan, 55 N. Y. Supp. 616. Petition stating merely that petitioner is "lessee and landlord of," etc., is not sufficient. Faber *v.* Appel, 99 N. Y. Supp. 215; Loft *v.* Caziz, 84 N. Y. Supp. 228. Petitioner "says that he is the agent for ————, landlord of," etc., is insufficient. Cohen *v.* Brossevitch, 67 N. Y. Supp. 670. But in forcible entry and detainer the petitioner need not set up a title but peaceable possession, at least constructively, under claim of right. Wood *v.* Phillips, 43 N. Y. 152.

2 People *v.* Campbell, 60 How. Pr. 102.

3 People *v.* Matthews, *supra*.

4 Dreyfus *v.* Carroll, 58 N. Y. Supp. 1116.

5 Oakley *v.* Schoonmaker, 15 Wend. 226.

6 McDonald *v.* McLaury, 17 N. Y. Supp. 574.

7 Posson *v.* Dean, 8 Civ. Proc. 177. The petition must allege in which one of the three methods presented by Code of Civil Procedure, § 2240, the notice was served. Stuyvesant Real Estate Co. *v.* Sherman, 81 N. Y. Supp. 642.

closing features of the petition will be given mention in a future paragraph.[8]

110. Same — Same — Same — Tenant in Default for Rent, Taxes, Etc.

When withholding rent is the grievance[9] the landlord complains of it must be alleged specifically, following the facts of the tenancy as mentioned above, that under the terms of the lease there became due from the tenant and payable on a named day a certain sum as rent, that such rent had been duly demanded and the tenant had made default in the same. That before beginning the proceedings the required notice had been served upon the tenant bidding him, in the alternative, within three days either to pay the rent or vacate the premises.[10] Likewise in a case of failure by the tenant, if the premises are in a city, to pay taxes, etc., which by express words in the lease he had agreed to pay; but this feature of the agreement must be alleged as well as the default, and the latter must be stated to have continued for sixty days, and the alternative notice alleged to have been served must bear express reference to taxes and penalties instead of rent.[11]

111. Same — Same — Same — Same — Service of Notice.

If demand of payment[12] has been made personally[13] within due time an allegation of this and refusal ren-

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8 Paragraph 114, *post*.

9 N. Y. Code Civ. Proc., § 2231 (2).

10 The service of the alternative notice must be alleged specifically. Boyd *v.* Milone, 53 N. Y. Supp. 785.

11 N. Y. Code Civ. Proc., § 2231 (3).

12 This demand need be alleged as for rent due merely, the amount is immaterial. Sheldon *v.* Testera, 47 N. Y. Supp. 653.

13 Zinseer *v.* Harman, 52 N. Y. Supp. 107.

ders necessary only one that notice to vacate has been served.[14] The notice in either case must be stated to have been in writing[15] and served on a day named so that the three days may appear to have elapsed before institution of the proceedings, and the name of the person serving and the manner of service must be set out.[16] To satisfy the statute the service as shown must have been managed in like manner as in that of a precept[17] which will be described hereafter in its proper connection. Service upon one of two joint tenants suffices,[18] but not upon a subtenant although he be made a party.[19] There is no particular form of words essential to the notice; if the full intention can be gathered clearly from it nothing more is expected.

### 112. Same — Same — Same — Tenant Putting the Premises to a Lewd or Unlawful Use.

If the landlord's grievance arises out of the premises being put to a lewd or illegal use there must be set forth specifically, as in other cases, all the facts leading up to the cause of complaint and, of course, the cause itself, but there seems to be necessary no allegation that notice to vacate has been served upon the tenant; probably for the reason that the unlawful use renders the lease void. However, an owner or tenant of neighboring property may bring the proceeding on the landlord's failure to act, and when such person

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14 Heinrich *v.* Mack, 56 N. Y. Supp. 155.

15 Rogers *v.* Lynds, 14 Wend. 173.

16 People *v.* Welsh, 87 N. Y. 481.

17 New York Code Civ. Proc., § 2231.

18 But if there are more than one tenant the demand need not be made upon each. Geisler *v.* Weigand, 9 N. Y. 227.

19 Matter of Glenn and Clements, 1 How. Pr. 213.

petitions he must allege specifically service upon the landlord of notice, in which the complaining party's name, the location of the neighboring property owned or occupied by him and the nuisance must be set forth, requiring such landlord to prosecute within five days. The landlord's indifference to the notice up to the end of the time thereby given him entitles the other to proceed.[20]

113. Same—Same—Same—Insolvent or Bankrupt Tenant.

Bankruptcy or insolvency of the tenant as a cause for proceedings to expel him[21] hardly calls for remark; since, if the rent is forthcoming, the landlord probably would not concern himself about the financial condition of his tenant and, if it is not, he would proceed against him as in any other case where rent is in default. The main practical effect of the provision for the landlord's behoof might be that the tenant, apprehensive of another trouble when already he has enough to suffer, might stir himself in an endeavor to have the landlord given security for payment of the rent, so that the present relation of landlord and tenant be not interrupted; since the tenant's misfortune would render it difficult for him to enter into relations with a new landlord.

114. Same—Same—Same—Allegations to Follow that of Notice — Verification.

It is to be kept in mind that the day when the notice was served must be set out so that it may appear that the time given within which to vacate expired before

[20] New York Code Civ. Proc., § 2237.
[21] New York Code Civ. Proc., § 2231 (4).

the making of the application.[22] Next it is to be alleged that the person proceeded against, notwithstanding the default mentioned, still remains in possession of the premises without the consent of the petitioner:[23] then follows the prayer for relief, which is for a final order to remove the delinquent from the premises. The petition must be verified, the verification being in form similar to that used in the case of a pleading in a regular action.[24] If this is made by an agent it must so appear by the agent's deposing in terms that he is such rather than by a mere expression of his quality.[25] A similar rule governs a verification made by a legal representative or an assignee of the landlord when either institutes the proceedings.

115. Same — Same — Same — Application, to Whom Made.

Application for the precept is made to a judicial officer of a county, city, town or incorporated village according to the location of the property. Thus, taking first Greater New York; if in Manhattan, to the judges of either the supreme court, the city court of New York, or the municipal court of the district within which any portion of the property lies; if in Brooklyn, to the judges of either Kings county court, or the municipal court of the district within which any portion of the property lies; if in The Bronx, Queens or Richmond, to the judges of the municipal court. Next Albany: here the application is made to a justice

22 Hedden *v.* Nederburg, 55 N. Y. Supp. 613.

23 Rogers *v.* Lynds, 14 Wend. 173.

24 Neglect to verify a petition goes to the jurisdiction, hence verification is indispensable. Wands *v.* Robarge, 53 N. Y. Supp. 700.

25 Cunningham *v.* Goelet, 4 Den. 71.

of the justices' court. In Troy it is made to a justice of the city court. In Syracuse, Rochester or Buffalo, to a justice of the municipal court. In Oneida, Madison county, to a justice of the city court. In the smaller cities, to the mayor, the recorder or the justices of the peace. In an incorporated village, to a justice of the peace. In the counties at large, to a county judge or special county judge.[26]

**116. Same — Same — Same — Steps Following the Petition — Issue of Precept.**

Inasmuch as the applicant must make the allegation in his petition show specifically which one in particular of the characters heretofore mentioned is borne by the occupant proceeded against, the nature of the requisite jurisdictional facts differ with the case so far; but there is little variety in the subsequent proceedings. On receiving the petition the judicial officer issues a *precept* directed to the person or persons complained against, requiring them forthwith to vacate or show cause before him at some time and place therein designated why the possession should not be delivered up as prayed.[27] This precept is returnable from three to five days after its issue,[28] except when the grievance is that the tenant's term has ended, in which case if

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26 See McAdam on Landlord and Tenant, vol. 3, p. 27.

27 New York Code Civ. Proc., § 2238. Unless there is only one person to be dispossessed all should be named in the petition, and the tenants set forth particularly *as* tenants and the undertenants *as* undertenants, although if the names of the latter cannot be learned conveniently they may be given fictitious names. Wiggin *v.* Woodruff, 16 Barb. 474; Ash *v.* Purnell, 16 Daly, 189.

28 New York Code Civ. Proc., § 2238. A clearly appearing clerical error whereby it was made six days may be corrected. Powers *v.* DeO., 72 N. Y. Supp. 103.

the petition was made on the day of the expiration of the lease, or the next day, the judge in his discretion may set the return for that day after noon and before six o'clock p. m.[29]

117. Same — Same — Same — Same — In New York.

"In the city of New York,[30] where the application is made to a district (municipal)[31] court the petition must be filed with, and the precept must be issued by the clerk of the court; and the precept must be made returnable before the court at the place designated, pursuant to law, for holding the court; and all subsequent proceedings in the cause must be had at that place, except as otherwise prescribed in section 2246 of this act. If upon the return of the precept, or upon an adjourned day, the justice is unable, by reason of absence from the court room or sickness, to hear the cause, or it is shown by affidavit that he is for any reason disqualified to sit in the cause, or is a necessary or material witness for either party, a justice of any other district court of the city may act in his place at the same court room."

118. Same — Same — Same — Who to Serve — Responsibility.

In form the precept is that of the people;[32] if it issues out of the municipal court of New York the service of the copy is entrusted to the marshal, unless

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29 New York Code Civ. Proc., § 2238.

30 This paragraph except as remarked in the note next following is in the words of section 2239, New York Code Civ. Proc.

31 An effect of the charter of Greater New York (L. 1897, chap. 378, § 1369) is the substitution of municipal for district court.

32 Being process.

the court deputes some one else specially,[33] and it can not be made outside of the court's local jurisdiction.[34] The person into whose hands it is given thus must use all diligence to serve it upon the party it is directed to or — if the latter cannot be found — his agent; and if these efforts fail report the fact to the court by endorsement on the paper.[35] A misdemeanor is imputed to one who violates this regulation wilfully, and if he himself be a tenant of the landlord interested he is liable to forfeit to the latter the value of three years rent. The words of this section must appear on the back of any copy served otherwise than personally. The marshal's certificate, or the private person's affidavit of the fact and manner of service is presumed to be true.[36]

119. Same — Same — Same — Service of the Precept.

A precept, if it is directed to a private person, is served by delivering to him[37] — if directed to a corporation, by delivering to one of its officers as in the case of a summons — a copy, at the same time exhibiting to him the original.[38] If the private person is a resident service in the absence of him from his dwelling-house may be made by delivering the copy at the latter to a person of suitable age and discretion there resident,[39] and if none such is there then by delivering at the property sought to be recovered to a person of

33 New York Code Civ. Proc., § 3208.
34 Beach *v.* Bainbridge, 7 Hun, 81.
35 New York Code Civ. Proc., § 2241.
36 McAdam on Landlord and Tenant, vol. 3, p. 51.
37 A copy must be served upon each tenant. People *v.* DeCamp.
38 Deuel *v.* Rust, 24 Barb. 438.
39 People *v.* Platt, 43 Barb. 116.

those qualifications there resident, and, if none, to one such there employed. If all these efforts fail to effect service the copy may be affixed upon a conspicuous part of the building.[40] If returnable on the day of issue the service must precede the return by two hours, at least; in other cases by two days.[41]

120. Same — Same — Same — Proceedings on Return of Precept.

At the time when the precept is returnable the petitioner must — unless the adverse party appears[42] — make due proof of the service.[43] The inference is that if the adverse party appears generally he has waived the point of jurisdiction;[44] however he may appear specially for the purpose of raising it.[45] The person who effected the service is called in to testify as to his performance in that connection so that the sufficiency of his acts may be passed upon;[46] and sufficiency here depends upon whether the service as so proved conformed to the statute.[47] But if the service was effected by delivering the copy to some one other than the tenant, in the latter's absence, the name of this other person must, if ascertainable, be disclosed.[48] When the petitioner is a person aggrieved by the proximity of premises devoted to illegal uses the landlord or

40 Beach *v.* Bainbridge, *supra*.

41 And see generally New York Code Civ. Proc., § 2240.

42 Peer *v.* O'Leary, 28 N. Y. Supp. 687.

43 New York Code Civil Proc., § 2243.

44 Grafton *v.* Brigham, 24 N. Y. Supp. 54; Nemetty *v.* Naylor, 100 N. Y. 562.

45 Beach *v.* Bainbridge, 7 Hun, 81.

46 Robinson *v.* McManus, 4 Lans. 380.

47 New York Code Civ. Proc., § 2240.

48 New York Code Civ. Proc., § 2243.

tenant, or both, may appear in defence.[49] Appearance may be personal or by attorney, for it is not the court's business to question the latter's authority.[50]

121. Same — Same — Same — Answer.

If any of the persons proceeded against[51] designs contesting the merits of the petition he must file a verified answer[52] when the precept is returnable, since no time for the purpose is allowed him as in the case of service of summons in an action.[53] A tenant is not allowed to dispute his landlord's title,[54] and the landlord's claim that the rent is in default cannot be met with a claim that a portion of this rent has been paid.[55] Eviction will be considered in the next paragraph. Other allegations may be denied, however, or there may be set up new matter constituting a legal or equitable defence.[56] But no money demand by way of affirmative relief is good, for the proceeding is not one for the payment of money,[57] nor a demand for affirmative equitable relief, for the court has no equitable powers.[58] In forcible entry and detainer either the

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49 New York Code Civ. Proc., § 2242.

50 People *v.* Murray, 21 N. Y. Supp. 797.

51 Any person who can swear to being in possession may defend. People *v.* Howlett, 76 N. Y. 574. Undertenant. People *v.* Howlett, *supra*. Tenant's wife left in possession by husband. *In re* Wright, 16 N. Y. Supp. 808. And see Neusberger *v.* Brodelefsky, 64 N. Y. Supp. 131.

52 Defendant is not "in court" until he has filed a verified answer. Wands *v.* Robarge, 53 N. Y. Supp. 700.

53 New York Code Civ. Pro., § 2244.

54 Ward *v.* Kelsey, 14 Abb. Pr. 372; Ingraham *v.* Baldwin, 9 N. Y. 45.

55 Jarvis *v.* Driggs, 69 N. Y. 143.

56 New York Code Civ. Pro., § 2244.

57 Wulff *v.* Cilento, 59 N. Y. Supp. 525; Bennett *v.* Nick, 61 N. Y. Supp. 106; Spiro *v.* Barkin, 61 N. Y. Supp. 870.

58 Earle *v.* McGoldrick, 36 N. Y. Supp. 803.

forcible entry or the forcible holding out may be denied or it may be alleged the pleader or the person he claims under has held possession for three years and his interest is still outstanding.[59]

122. Same — Same — Same — Same — Counterclaim.

The answer may set up a counterclaim, just as though this was an action for the recovery of rent,[60] but matter which might have been used as a claim of constructive and complete eviction may not be set up, for in effect this would be admitting that the landlord is being kept out of possession while being kept out of possession while being paid no rent.[61] And for the same reason a claim for damages would not be admissible for breach of any covenant of the landlord's to put the premises into good condition;[62] nor would a claim for damages for some sort of annoyance the tenant is subjected to through an objectionable use of premises nearby occupied by other tenants of the same landlord.[63] But a claim of actual eviction from a portion of the demised premises is different. This, although the tenant continues to occupy the rest of the premises, has the effect of suspending the entire rent so long as the tenant remains thus evicted.[64]

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59 New York Code Civ. Proc., § 2245.

60 New York Code Civ. Proc., § 2244. But see Pearson *v.* Germond, 31 N. Y. Supp. 358.

61 Hamilton *v.* Graybill, 43 N. Y. Supp. 1079.

62 Ward *v.* Kelsey, 14 Abb. Pr. 372.

63 Boreel *v.* Lawton, 90 N. Y. 293. And see DeWitt *v.* Pierson, 112 Mass. 8; Rowbotham *v.* Peace, 5 Houst. 135; Brewing Co. *v.* Hart, 62 Ill. App. 212.

64 Murphy *v.* Gedney, 10 Hun, 151.

123. Same — Issue — Removal of Cause — Duty of Presiding Justice.

The answer being filed the case is then at issue,[65] but before proceeding to a trial, if the tribunal is the municipal court of New York, the sitting justice, in his discretion,— or, in his absence the clerk, by consent of both parties — on motion of either party by order may transfer the case to a corresponding court of an adjoining district. The court it is thus transferred to has then the same jurisdiction and powers with respect to it, at its own court house, as if the property was within its district.[66] But the latter justice must issue the final order.[67] And it is his duty to finish up the matter before he goes out of judicial office.

124. Same — Trial Jury — Final Order — Costs.

The judge may adjourn the case so that the applicant may be given time to bring in his witnesses,[68] but not for more than ten days unless all parties consent.[69] The issues as joined must be tried by the judge or justice except where a party on either side, at the time set by the precept for showing cause, demands a jury, in which case that party pays into court the expense of procuring one.[70] A jury of six,[71] drawn in a pre-

65 The parties are at issue when the pleadings bring them to a direct point of contention as to the facts or the law of the case. See Fritztuskie *v.* Wauroski, 82 N. Y. Supp. 543.

66 New York Code of Civ. Proc., § 2246.

67 Wyckoff *v.* Frommer, 33 N. Y. Supp. 11.

68 But not before the answer has been filed. See People *v.* Murray, 21 N. Y. Supp. 797; affd., 138 N. Y. 635, which cites numerous authorities on the subject.

69 New York Code Civ. Proc., § 2248.

70 New York Code Civ. Proc., § 2247.

71 New York Code Civ. Proc., § 2247.

scribed manner, and the parties meantime having the reasonable right of challenge, is then sworn "well and truly to hear, try and determine the matters in difference between"[72] the applicant named and the named person or persons proceeded against. If the applicant prevails in the trial the court makes its final order awarding him the possession, or — if he be not the landlord, but the complaining neighbor of a tenant using his premises unlawfully[73]—directing the removal of the offender,[74] and in either the case the applicant is allowed costs.[75]

### 125. Same — Warrant of Possession — Its Issue and Execution.

Following the final order the court must issue[76] its warrant directed to the proper officer — sheriff, constable or other, as the case may be, according to the quality of the tribunal — describing the premises involved and commanding him to remove all persons from them and to put the petitioner into possession[77]— except in the one case mentioned when the petitioner is a person other than the landlord.[78] In executing this warrant the officer must time his performance between sunrise and sunset.[79] The issue of the warrant

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72 New York Code Civ. Proc., § 2998.

73 New York Code Civ. Proc., § 2237.

74 New York Code Civ. Proc., § 2249.

75 New York Code Civ. Proc., § 2249.

76 "Must issue." If he is not disposed to do so mandamus lies to compel him. People *v.* Murray, 21 N. Y. Supp. 797; affd., 138 N. Y. 635.

77 New York Code Civ. Proc., § 2251.

78 Holder of premises in neighborhood of tenant using premises for unlawful purposes. See New York Code Civ. Proc., § 2237.

79 New York Code Civ. Proc., § 2252. Besides, he must guard against undue harshness and indifference to the comfort of those he dispossesses;

ends the relation of landlord and tenant, without prejudice, however, to the right of the landlord in a proper action afterward to recover the rent.[80] But the tenant has a reasonable time in which to remove his effects,[81] for the landlord acquires no right to them.[82]

**126. Same—Same—Stay—Tenant—Rent—Taxes—Insolvency, Etc.**

But the warrant to dispossess may be stayed, before its issue, by the party the final order is directed against, as also may be an execution for costs. First, by paying the rent due or the delinquent taxes or assessments, accordingly as either—or both—were found by this order to be in default, and meantime the possession withheld, with—in the latter case—the interest and penalty if any, and the costs of the proceedings; or by such party's giving to the judge his undertaking in a sum and with sureties satisfactory to the latter, that the obligations mentioned with costs and, in the case of taxes, etc., interest and penalty, shall be paid within ten days, unless he exhibit to the judge satisfactory evidence of payment.[83] Second, by paying the costs and giving to the judge or clerk his undertak-

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but in this respect he is answerable himself and does not commit the landlord by his conduct. Welsh *v.* Cochran, 63 N. Y. 181.

80 New York Code Civ. Proc., § 2253.

81 Cornish *v.* Stubbs, L. R. 5 C. P. 334; Moore *v.* Wood, 12 Abb. Pr. 393. But without the owner's consent the tenant is not at liberty to return and remove fixtures he has put upon the premises, if the detaching must result to the injury of the premises. Hart *v.* Hart, 117 Wis. 639.

82 Reich *v.* Cochran, 99 N. Y. Supp. 755.

83 New York Code Civ. Proc., § 2254. The person proceeded against is entitled to a return of the undertaking at the hands of the judge immediately upon his producing evidence of payment. If the proof is not forthcoming within ten days, though, the petitioner is entitled to have it delivered to him. New York Code Civ. Proc., § 2255.

ing, likewise satisfactory, etc., in favor of the petitioner that the back rent and future rent shall be paid. This applies only when the petition was based upon the tenant's insolvency or bankruptcy.[84]

127. Same — Same — Possession Withheld After Execution Sale.

"When the final order establishes that the person against whom it is made continues in possession of real property which has been sold by virtue of an execution against his property he may effect a stay by paying the costs of the special proceeding and delivering to the judge or justice, or the clerk of the court, an affidavit that he claims possession of the property by virtue of a right or title acquired after the sale or as guardian or trustee of another; together with his undertaking to the petitioner, in such a sum and with such sureties as the judge or justice approves, conditioned upon his paying any costs or damages which he may be adjudged to pay in an action of ejectment brought against him by the petitioner within six months thereafter, and also upon his committing no waste upon or injury to the property meantime.[85]

128. Same — Stay Must be by Order — Appeal.

The final order, like a judgment of the particular court making it, is subject to appeal,[86] but a final de-

84 New York Code Civ. Proc., § 2254. This undertaking is properly committed by the judge into the hands of the petitioner immediately upon his approving it. New York Code Civ. Proc., § 2255.

85 New York Code Civ. Proc., § 2254. This applies also to a tax sale. People v. Palmer, 16 Hun, 136. The petitioner is entitled to the custody of this instrument as soon as it is approved. New York Code Civ. Proc., § 2255.

86 New York Code Civ. Proc., § 2260. On appeal in default of a showing, on the face of the record, of authority in him who served

termination by the appellate division — unless an appropriate order of that court be made at the same term or the next — cannot be taken for review to the court of appeals. Except where the case arose out of a holding over by the tenant in default of rent, neither the appeal nor the undertaking on the appeal effects a stay of the issue or execution of the warrant.[87] The stay must be by order of a justice of the Supreme Court, if in the city or county of New York, elsewhere by order of a county judge, on the appellant's giving the usual security for perfecting the appeal and staying the execution and also an undertaking to the effect that if the appeal results to his disadvantage he will pay all rents of the premises accruing or to accrue or, if there was no lease, the value of the use and occupation subsequent to the institution of the special proceedings.[88]

129. Same — Appeal — Reversal.

If the appellate court reverses the final order it may award restitution to the party who was removed, with costs, and make any other disposition essential to the effect of its decision; and the party mentioned is entitled to bring an action against his adversary in the case for any damage accruing to him by the dispossession.[89] Provided this damage is not of a remote sort;[90] and damage to the property of the injured party is not to be colored or magnified by any interruption, etc., affecting his business. But in case the

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the process, authority to him from the justice is presumed. Mooney *v.* McGuirk, 64 N. Y. Supp. 41.

87 New York Code Civ. Proc., § 2261.

88 New York Code Civ. Proc., § 2262.

89 New York Code Civ. Proc., § 2263. Chretian *v.* Doney, 1 N. Y. 419.

90 Eten *v.* Luyster, 60 N. Y. 252.

tenant's term under his lease has expired by this time no restitution is to be ordered. And properly none such is to be ordered where the reversal is grounded on mere irregularities in the proceedings, it being plain that the merits do not entitle the tenant to restitution.[91]

130. Same — Privilege of Redemption — Tenant Under Long Lease.

When the warrant was in a proceeding on a holding over after default in rent and five years of the term of the lease remain yet unexpired the lessee, his executor, administrator or assignee, has a year to redeem in, by paying or tendering to the petitioner or his heir, executor, etc., or — if within five days before the expiration of the year such, with reasonable diligence, cannot be found within the juridical territory of the place where any part of the property is — to the judge issuing the warrant or his successor in office, all rent then in arrear with interest and costs and charges; upon doing which his original tenancy is reestablished.[92] But if in the meantime the landlord has leased to a third party the latter, his assigns, undertenants or other representatives, upon complying with the terms of the lease, remain in until the first day of May following the redemption.[93]

131. Same — Same — Mortgage or Judgment Creditor of Tenant.

A similar privilege is enjoyed by a mortgagee of the lease and the tenant's judgment creditor, in ab-

91 Heyden *v.* Sewing Machine Co., 54 N. Y. 221; People *v.* Hamilton, 15 Abb. 328.

92 New York Code Civ. Proc., § 2256.

93 New York Code Civ. Proc., § 2258.

sence of redemption by the tenant himself, provided the mortgage of the lease was recorded, or the judgment was docketed, before the precept's issue. The person here interested may file with the judge or justice, or his successor, within a year after the execution of the warrant a notice setting forth his interest and the sum due, and describing the premises and stating the intention to redeem. Failing redemption by the tenant, etc., within the year such person, or — in case there are two or more — the senior lien holder, may redeem for himself before two o'clock on the secular day next succeeding the last day of the year. The next creditor in seniority of lien is given the next day, and so on, but the junior lien holders must settle in full with their seniors or deposit the sums due them with the judge or justice,[94] and the intermediate lease holder has his right as mentioned in the last paragraph.[95]

132. Same — Order Confirming the Redemption.

Any of the persons redeeming, through his petition setting forth the facts of the redemption, may ask the judge or justice to establish the rights and liabilities of the parties, and in response there is issued an order to show cause, at a specified time and place, why the petition should not be granted. This order is returnable in from two to ten days and must be served within two days from the day set for the hearing. On the return day the judge or justice hears the allegations and proofs and makes the final order appropriate to the facts and circumstances, the petitioner

94 New York Code Civ. Proc., § 2257. Spraker *v.* Cook, 16 N. Y. 567, as to execution debtor's removal after sale.

95 New York Code Civ. Proc., § 2258.

paying the costs. This final order, or a certified copy of it, may be recorded in like manner as a deed. Any person redeeming on failure of the lessee to do so succeeds to all the latter's duties and liabilities accruing after the redemption as fully as if he himself was named as lessee in the lease.[96]

133. Bailee — Proprietor as; Bailment — Question of Care.

The proprietor at times may stand in the relation of bailee to the apartment-holder, but the fact does not impose on him any duty that would not be his in the case of any other bailor. For we know, on the one hand, that the law of innkeepers does not affect the holding of premises in an apartment-house, as such,[97] and, on the other, that a tenant has throughout the term absolute dominion over the subject of the demise, so that personal property, without regard to ownership, situate thereon is necessarily in the keeping of him and not the landlord. A bailment may be defined for purposes here, as the agreed holding by one person of goods belonging to another. The bailor owns the goods and the bailee has their custody. As their custodian the bailee may not remain indifferent to their safety; his duty in the exercise of care, however, differs according to his undertaking.[98]

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96 New York Code Civ. Proc., § 2259.

97 Except when relieved by statute an innkeeper is an insurer of the property of his guest. Crapo *v.* Rockwell, 94 N. Y. Supp. 1122. And even when goods were deposited in anticipation of owner's becoming a guest. Hotel Co. *v.* Faust (Tex.), 186 S. W. 373.

98 Merchants' Nat. Bank *v.* Guilmartin, 93 Ga. 503, 44 Am. St. Rep. 182.

134. Same — Gratuitous Bailee — Liability.

A bailee who takes, or is to take, no compensation of any kind is liable only for gross negligence,[99] and this consists in a failure to bestow merely the care which the property in its situation demands.[1] Such a one would be responsible if, for instance, he delivered the goods to a stranger, having made no serious effort first to learn the latter's right to them.[2] And liability might be his if the stranger were an officer of the law, the bailee not questioning his authority nor putting the owner into a position himself to do so.[3] Ordinarily, though, such a bailee is not charged with a loss by fire,[4] or by burglary.[5] But where the lessee of a room locked up his trunk in the latter and went away, first giving the door-key to the lessor, who thereupon without the lessee's authority allowed a stranger to sleep in the room, and the stranger rifled the trunk, notwithstanding that the relation of innkeeper and guest did not exist, the lessee although a gratuitous bailee was liable, there being gross negligence.[6]

135. Same — Bailee — For Hire — Liability.

A bailment reciprocally beneficial — the one party having his goods kept for him and the other being paid for keeping them — imposes upon the bailee the duty

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99 Gray *v.* Merriam, 148 Ill. 179, 39 Am. St. Rep. 172.

1 Gray *v.* Merriam, *supra*.

2 Head *v.* Gleason, 52 Ark. 364, 20 Am. St. Rep. 186. And see Union Stockyards Co. *v.* Mallory, 157 Ill. 554, 48 Am. St. Rep. 341.

3 See next section.

4 Texas Cent. R. R. Co. *v.* Flannery, 45 S. W. 214. And see Standard Brewing Co. *v.* Malting Co., 70 Ill. App. 363.

5 Campbell *v.* Klein, 101 N. Y. Supp. 577; Knights *v.* Piella, 111 Mich. 9, 69 N. W. 92.

6 McKenna *v.* Walker, 85 Mo. App. 570.

of ordinary or reasonable care.[7] Such care is the care or diligence that would be exercised by a person of ordinary prudence with reference to his own property.[8] It was held to be a want of such care where a bailee, paid for the safe-keeping of a woman's trunk, delivered the trunk to a person wrongfully representing himself to be entitled to it, although, in fact, the woman's husband.[9] If the property is demanded of the bailee by virtue of legal process the bailee obeys at his peril, unless satisfied first as to the validity of the process.[10] A presumption of negligence lies against the bailee in case goods delivered to him in good condition are returned subsequently in bad.[11] Of course, this may be overcome by evidence but the burden of proof is on him.[12]

136. Same — Rights of Parties as to Fire Insurance.

A principle of the law of agency is that the act of one person for another — although done without his authority — avails the latter provided he shows a

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[7] Mattern *v.* McCarty (Nebr.) 102 N. W. 468; Oderkirk *v.* Cent. Nat. Bank, 119 N. Y. 263.

[8] Weick *v.* Dougherty (Ky.), 90 S. W. 966, 3 L. R. A. (N. S.) 348.

[9] Markoe *v.* Tiffany, 49 N. Y. Supp. 751, elaborate opinion; affirmed in 163 N. Y. 565. See also Tumbler *v.* Koelling (60 Ark. 62, 46 Am. St. Rep. 146), a case where valuables checked at a bathhouse carelessly delivered to the thief of the check. See also Bath Co. *v.* Allen, 66 Nebr. 295, 92 N. W. 354. But where the price of the bath was trifling and no pretense made of safekeeping the customer's things such a loss was held not to commit the proprietor. Schriep *v.* Sturm, 54 N. Y. Supp. 140.

[10] Roberts *v.* Stuyvesant S. D. Co., 123 N. Y. 57; Jenness *v.* Shriever, 188 Mass. 70, 74 N. E. 312. And see Glass *v.* Hauser, 83 N. Y. Supp. 177.

[11] Jackson *v.* McDonald, 70 N. J. Law, 596.

[12] Campbell *v.* Muller, 43 N. Y. Supp. 233.

timely intent to have it so.[13] It follows that a policy of insurance whereby goods of the bailor specifically are insured, although procured by the bailee in his own name, may be affirmed by the bailor after, as well as before loss, and benefits him.[14] But there is no obligation on the bailee to insure them; and if the insurance is affected by him on the goods on the premises in bulk and a subsequent loss is adjusted at less than the amount of the bailee's personal loss, the bailor cannot claim successfully a participation.[15] And the actual mention of the bailor's property in the proof of loss does not affect this rule.[16] But it would be otherwise if it was made to appear that the design of the bailee was to insure the bailor's interest or the bailor had instructed him to do so.[17] The bailee does not, by becoming such, insure the subject of the bailment so as to assume a possible loss by fire;[18] the loss becomes his only in case it came about owing to his want of prudence.[19]

### 137. Same — Lien for Storage — Involuntary Bailee — Strangers' Negligence.

Goods left on the premises by a tenant — his lease having expired — under an agreement to pay a

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13 Tweeddale *v.* Tweeddale, 116 Wis. 517, 93 N. W. 440.

14 Stillwell *v.* Staples, 19 N. Y. 400. See also Watkins *v.* Durant, 10 Ala. 251.

15 Cromwell *v.* Brooklyn Fire Ins. Co., 44 N. Y. 42, 4 Am. St. Rep. 641. But see Roberts *v.* Fire Ins. Co., 165 Pa. St. 55, and Home Ins. Co. *v.* Baltimore Warehouse Co., 93 U. S. 527.

16 Reitenbach *v.* Johnson, 129 Mass. 316; Lee *v.* Adsit, 37 N. Y. 78.

17 1 Wood on Fire Ins., § 277.

18 Gregory *v.* Stryker, 2 Den. 628.

19 Weick *v.* Dougherty (Ky.), 190 S. W. 966; Campbell *v.* Muller, 43 N. Y. Supp. 233; Waterman *v.* Amer. Pier Co., 44 N. Y. Supp. 410.

monthly sum to the landlord are not — unless by express contract — subject to a lien for storage.[20] For, in the absence of agreement to that effect, the common law does not so subject goods except for the benefit of a warehouseman or an innkeeper,[21] neither of which an apartment-house proprietor is. But the landlord may recover as an involuntary bailee; for such a bailee may conserve goods and recover from the owner the reasonable worth of his services in doing so.[22] In regard to strangers to the bailment it has been said that the bailee may proceed against such where the subject of the bailment has suffered by the stranger's negligence; and this even in a case where the bailor could not hold the bailee for the loss.[23]

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20 Webster *v.* Keck, 64 Nebr. 1, 89 N. W. 410. And see Machine Co. *v.* Holway, 92 Me. 414, 42 Atl. 799.

21 Preston *v.* Neale, 12 Gray, 222; Machine Co. *v.* Holway, 92 Me. 414, 42 Atl. 799.

22 Moline, etc., Co. *v.* Neville, 52 Nebr. 574, 72 N. W. 854.

23 The Winkfield, 9 Aspinwall (Eng.), 259.

## CHAPTER THREE.

### PROPRIETOR AND THIRD PERSONS.

**138. Proprietor's General Liability to Strangers — Personal Injuries.**

There are only two ways in which a landlord may be made liable in a case where injury has come to a stranger through the defective condition of demised premises,[24] the occupier alone being liable *prima facie*.[25] The first of these is where, there having been a contract by the landlord to repair, the tenant can sue him for the effects of his manner of repairing, if any injury is identified with them.[26] The second is where there has been a misfeasance by the landlord; for instance, where knowingly he has let the tenement while it was in a dangerous condition.[27] The latter would

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[24] Nelson *v.* Liverpool Brewing Co., L. R. 2 C. P. Div. 311.

[25] Nelson *v.* Liverpool Brewing Co., *supra*; Lee *v.* McLaughlin, 86 Me. 269; Shipley *v.* Fifty Associates, 101 Mass. 251.

[26] Nelson *v.* Liverpool Brewing Co., *supra*. To be sure, no action of tort will lie for the violation of a covenant to repair, but "in Wynne *v.* Haight (50 N. Y. Supp. 187) it was said that a case might be removed from the operation of this rule if the injury resulted not in consequence of the covenant to repair but proceeded from some affirmative and distinct acts constituting negligence and the acts were the proximate cause of the injury." Dissenting opinion of Hatch, J., in Kushes *v.* Ginsburg, 91 N. Y. Supp. 216. "By agreeing to assume the duty of repairing the owner assumes liability if, through his negligence in performing the duty, injury comes to someone rightfully on the premises." Barron *v.* Liedloff, 95 Minn. 474, 104 N. W. 289.

[27] Nelson *v.* Liverpool Brewing Co., *supra*; Rich *v.* Basterfield, 26 E. C. L. 784; Clancy *v.* Byrne, 56 N. Y. 129; Owings *v.* Jones, 9 Md. 108; Brady *v.* Klein, 133 Mich. 422. But a defect in existence six years after entry might raise the presumption that it did not exist before entry. Hirshfield *v.* Alsberg, 23 N. Y. Supp. 217.

present the case of a nuisance. When the accident has arisen from a defect known to the tenant — one which is not a nuisance — the remedy against the landlord, if any may be resorted to, must be pursued by the tenant; because there is no privity between the landlord and a third person and the one does not owe the other any duty.[28] The rule is that one who is not a party to a contract cannot sue in respect of a breach of duty arising out of the contract.[29]

139. Same — Classes to Whom Such Duty Owed — Invitation — License.

But one may sue in tort, if injured through a nuisance which the landlord ought to abate; for there the landlord owes the duty of care and is liable for negligence to whomsoever he owes the duty.[30] The proprietor of a building is bound to keep it in reasonably safe condition for those who are impliedly invited to enter it.[31] Invitation is inferred where there is a common interest or mutual advantage; license when the object is the pleasure or advantage merely of the person using it.[32] If a licensee is injured through some defect in the premises the owner is not responsible,

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28 Clancy *v.* Byrne, *supra*; Brady *v.* Klein, *supra*.

29 Sterger *v.* Van Sicklen, 132 N. Y. 499; Clyne *v.* Holmes, 61 N. J. Law, 359.

30 "An actionable nuisance may be said to be anything wrongfully done or permitted which injures or annoys another in the enjoyment of his legal rights." Cooley on Torts, § 565. "Any act of an individual, though performed on his own soil, if it detracts from the safety of travelers is a nuisance." Shipley *v.* Fifty Associates, 101 Mass. 251; Rylands *v.* Fletcher, L. R. 3 H. of L. 330.

31 Klapporth *v.* Pier Co. (N. J. Law), 43 Atl. 981.

32 Campbell on Negligence, § 533; Bennett *v.* Railroad Co., 102 U. S. 577.

unless the defect was, to his knowledge, in the nature of a trap.[33] Thus, when a landlord gave an incoming tenant of his top floor permission to use some shelving which was stored in the cellar, and the tenant's servant, sent by his master to get the shelving, was injured by breaking through a rotten floor which the landlord knew nothing about the landlord was not responsible.[34]

140. Same — Trespassers — Exception — Attractive Nuisance.

It is a familiar principle that a property-owner owes no duty to a trespasser. It has been said, though, that the rule which relieves a private owner from liability to strangers or trespassers for injuries received on account of the unsafe condition of his property, does not apply to young children whom the unsafe features of the situation may attract by appealing to childish curiosity.[35] And in one case, at least, this principle was stretched in favor of physical and mental incapables irrespective of age.[36] The character of attractive nuisance has been imputed to an unguarded or open elevator door, or one easily to be opened from the outside.[37] The principle of attractive nuisance is not in universal favor — the contrary view rests on the argument that an owner owes no more duty to a trespassing child than to a trespassing adult; the duty being rather on some parent or guardian of the child to

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33 Burger *v.* Johnson, 6 Ohio N. P. 252.

34 Speckman *v.* Boehm, 56 N. Y. Supp. 758.

35 City of Pekin *v.* Mahon, 154 Ill. 141. See also Railroad Co. *v.* Stout, 84 U. S. 657 ("The Turntable Cases").

36 Coal & Coke Co. *v.* Leavitt, 109 Ill. App. 385.

37 Siddall *v.* Janson, 168 Ill. 43, 48 N. E. 191.

look out for it.[38] Even where the attractive nuisance theory is strongest with the courts it has been said that contributory negligence may be imputed to a child of seven.[39] At twelve a child is said to be amply old enough to have his eyes open to commonplace dangers.[40]

**141. Duty to the Outside Public — Travelers on the Highway.**

The occupier, and not the owner, is bound — as between himself and the public — so far to keep in repair the building abutting on a highway that the latter may be safe for the use of travelers. But this rule does not apply where the building had been let in portions to separate tenants, who thus would be occupants, the landlord retaining all the while the roof that covers all, and snow and ice had been allowed to accumulate on the roof, to the peril of travelers.[41] And in cases of doubt it might be said the landlord had invited an action. Thus where all the tenants had permission to use an opening through the sidewalk to the coal vault so they might bring their fuel in agreeably to the permission the cover being not kept fastened permanently, and, through the neglect of one of the tenants unknown to the landlord, this cover on an occasion was left not fastened at all, so that a pedestrian fell through and was injured, the landlord was held responsible.[42] The covered hole was a nuisance or not dependent on the amount of discretion of this or that

38 Ryan *v.* Towar, 128 Mich. 463.
39 City of Pekin *v.* Mahon, 154 Ill. 141.
40 Gleason *v.* Smith, 180 Mass. 6.
41 Shipley *v.* Fifty Associates, 101 Mass. 251.
42 Anderson *v.* Caulfield, 69 N. Y. Supp. 1027.

one of the tenants, and if the landlord chose to have things so the risk was properly his, rather than that of an unwary pedestrian.[43]

142. Same — Duty to Strangers Inside the Building.

We will consider the undemised parts of a house reserved for the use of all the tenants by a landlord who has let the house otherwise in portions separately. The duty of the landlord to keep these undemised parts safe for the tenants and persons other than they who, by reason of the occupancy by particular tenants, have a right to be there at one time or another, grows out of the contract of letting. By implication the contract includes, in other words, not only the tenant but the members of his family and his servants and agents who might rightfully occupy and use the tenement with him. It includes boarders and lodgers; if, without perverting the legitimate purpose of the house, such persons may be received there by the tenants. It includes all persons who in connection with the enjoyment of the premises contemplated by the letting may properly use them under the express authority of the tenant, and under his right.[44] It is the landlord's duty to provide safe arrangements for the entrance and departure of those invited to the premises.[45]

143. Same — Default — Responsibility for Injuries.

In the event of injury befalling a person, while on the premises as contemplated above, through no fault

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43 On the other hand see Duffin *v.* Dawson, in note to § 30, *supra*.

44 Coupe *v.* Platt, 172 Mass. 476; Helsonbeck *v.* Guhring, 31 N. Y. Supp. 674.

45 Camp *v.* Wood, 76 N. Y. 93.

of his own but by reason of the landlord's neglect of the duty under consideration the landlord is responsible in damages. An illustration is that of a man there for the purpose of delivering goods to one of the tenants. An elevator well having been left unguarded such a one fell through and down accidentally, and the landlord was made responsible in damages.[46] Another illustration is that of a letter carrier who, while in the common hall for the purpose of depositing mail matter in individual boxes placed there for the accommodation of the several tenants, by reason of a defect in the construction of the hall in some part fell and was injured.[47] Another, where, at the request of a tenant, a person had gone to hang out clothes to dry on a roof, set apart to be used for that purpose by the tenants generally, and had suffered injury through a defect in the footing there.[48]

144. Same — Particular Defects — Absence of Light in Hall or on Stairway.

The mere absence of light in a hall whereby a washwoman, about to leave the premises after returning a week's wash to a patron, failed to distinguish the exit door from the door of the cellar and so fell into the latter did not make the landlord liable.[49] The reason was that if the hall was so very dark the fact should have impressed carefulness upon the woman as a necessity. If she had moved with due caution or had asked for a light no accident could have occurred. But in Massachusetts it has been held that, although as a

46 Wright *v.* Perry, 188 Mass. 268, 74 N. E. 328.
47 Gordon *v.* Cummings, 152 Mass. 513.
48 Wilcox *v.* Lane, 167 Mass. 302.
49 Jucht *v.* Behrens, 7 N. Y. Supp. 196.

general thing halls and stairways are not required to be kept lighted, in the case of its having a peculiar construction it might be indispensable for some particular stairway to be lighted, and in such a case a landlord would be liable in damages if injury result to somebody from there being no light there.[50] In New York the fact that statute now imposes as an obligation upon owners of apartment and tenement-houses the keeping of halls and stairways sufficiently lighted affords plaintiffs, in such cases as the last, one item at least of evidence of negligence, to go with others to the jury.[51]

### 145. Same — Landlord Must Have Had Notice of Defect — Servant.

If the defect was unknown to the landlord, so that he was not, even if he wanted to do so, in a way to repair, no liability attaches to him in case of injuries received by anyone by reason of its existence. But his having no actual knowledge would not relieve him if the defect was one to which he might be said to be wilfully blind. Neither would his ignorance on the subject relieve him if notice was had by a person representing him in the management of the building.[52]

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50 Marwedel *v.* Cook, 154 Mass. 235. Marwedel v. Cook, has been vigorously attacked by the Supreme Court of Rhode Island. The question is, why should a man voluntarily poke about in utter darkness and expect somebody else to pay him if injury results to him from his stupid lack of caution? See Capen *v.* Hall, 21 R. I. 364, 43 Atl. 847.

51 § 87, Tenement-House Act. Omitting a compliance with the Tenement-House Act is not negligence *per se*, but only evidence in that direction. Ziegler *v.* Brennan, 78 N. Y. Supp. 342.

52 Beck *v.* Carter, 68 N. Y. 291; Murphy *v.* Brooklyn, 118 N. Y. 579; Henkel *v.* Murr, 31 Hun, 28.

Same — Demised Premises — Landlord's Liability to Stranger.

For injuries suffered by a stranger by reason of defects in the demised premises the landlord is not responsible unless the defect amounted to a nuisance existing before the change of possession.[53] And this is true even if he covenanted to repair; for the covenant does not benefit a stranger.[54] But by agreeing to assume the duty to repair the landlord assumes liability if through his negligence in performing the duty injury comes to someone rightfully on the premises.[55]

146. Same — Dangers in Lessee's Improvements — Effect of Renewal.

A landlord is not responsible to a guest of the lessee, it is hardly necessary to say, for dangers lying in improvements which the lessee himself made in the premises after entering under the lease.[56] It is to be stated in the same connection that the fact of the lease being renewed repeatedly, so that by imputation there might be a continual reverting and re-renting, would not make the landlord liable any the more.[57]

Same — Landlord's Liability for Servant's Acts.

The landlord must respond to others for acts not only of himself but of those he employs about the premises; and by *others* here is meant all others, whether strangers or apartment-holders. The accepted rule is: The master is answerable for all in-

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53 See § 83, *supra*.

54 See § 107, *supra*.

55 See § 107, *supra*.

56 Glass *v.* Coleman, 14 Wash. 635, 45 Pac. 310.

57 Glass *v.* Coleman, *supra*.

juries arising from the negligence or unskillfulness of his servant in executing duties assigned to him,[58] also for his servant's illegal acts done by force or in wantonness while in the performance of an act within the scope or course of his employment.[59]

147. Same — Master and Servant — Illustrations of Landlord's Liability.

The responsibility under the conditions first mentioned above is more apparent than that under the others; but we shall see. A man had occasion to go into an elevator shaft in order to fix some electric wires. Before actually putting himself into so dangerous a situation he had the elevator man promise that the car should not be run while he was there. Through forgetfulness or otherwise the promise was not kept, and the employer of the elevator man was made responsible for the injury that necessarily followed.[60] Another case was where a collector was sent by his employer to present a bill to a debtor, and during the resulting interview was guilty of violence toward the debtor. Here the employer was made responsible although, so far from instigating the assault, he had warned the collector against it. However, it is clear that while the act was not warranted by the employer, it was done while the employee was in the act of carrying out the duties of his employment.[61]

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58 Brown *v.* Purviance, 2 H. & G. 316.

59 Cate *v.* Schaum, 51 Md. 299. And see, generally, Baltimore Consolidated Railroad Co. *v.* Pierce, 89 Md. 495, 43 Atl. 474.

60 Rink *v.* Lowry (Ind.), 77 N. E. 967.

61 Grant *v.* Singer Mfg. Co. (Mass.), 77 N. E. 480.

### 148. Master's Liability to Servant — Servant's Assumption of Risk.

Inasmuch as in the modern apartment-house, or many of these houses, there are situations of more or less danger for persons employed about the premises, a few words on the law of negligence in this connection may be in place. A master owes the duty of reasonable care to his servant for the safety of the latter while actually in his employment. And the liability to the servant based on this duty he cannot escape even through an agreement made with the servant.[62] It has been said: "It is for the interest of the community that there should be no encouragement for any relaxation on the employer's part in his duty of reasonable care for the safety of his employee."[63] But, on the other hand, the servant is charged with the duty of using reasonable care and of assuming the everyday risks incident to his employment; those which are obvious or which with reasonable care he ought to know and appreciate, and those pointed out to him by the master.[64] And the employee assumes the risks of the employer's methods, when they are known and acquiesced in by him.[65] The doctrine of assumption of risk does not apply when the servant is ordered to do something outside of the scope of his employment.[66]

### 149. Same — Duty of Indicating Perils to Servant.

The employer is under no obligation to warn the employee of a danger with which the latter is ac-

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62 Cannaday *v.* Atl. C. L. Railroad Co. (N. Car.), 55 S. E. 836.

63 Johnston *v.* Fargo (N. Y.), 77 N. E. 388; Wagner *v.* El. Railway Co., 188 Mass. 437.

64 Erickson *v.* Slate Co., 100 Me. 107, 60 Atl. 708.

65 Huda *v.* Glucose Co., 154 N. Y. 474.

66 Oölithic Stone Co. *v.* Ridge (Ind.), 80 N. E. 441.

quainted already.[67] Servants are presumed to have eyes and ears and average intelligence, so as to see ordinary things for themselves, and the master is not answerable for obvious risks.[68] If the servant knows the danger of the machine he undertakes to work with it is no duty of the master to inform him of it.[69] Otherwise it is his duty.[70] The master does not insure him against any accident that may occur.[71] Although he must use ordinary care in providing safe machinery, etc.,[72] absolute safety is not guaranteed.[73] The vigilance required of the employee must be adjusted to the character of work he is engaged in.[74]

**Same — Condition of Appliances — Safety — What Servant May Assume.**

On his part, the servant has the right to assume that the appliances he is to have the working of and about are reasonably safe;[75] and it has been explained that "appliances," as used in this connection, includes machinery, apparatus, and premises.[76] He does not

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67 Nyè *v.* Dutton, 187 Mass. 549.

68 Baldwin *v.* Urner, 206 Pa. St. 459. If a servant has knowledge of a defect knowledge of the danger is imputed to him; and this, even if the master says there is no danger. Railway Co. *v.* Myers (Ill.), 80 N. E. 897; Jones & Adams Co. *v.* George (Ill.), 81 N. E. 1.

69 Dillon *v.* Nat. Coal Tar Co., 181 N. Y. 215.

70 Postal Tel. Cable Co. *v.* Likes (Ill.), 80 N. E. 136.

71 Fox *v.* Wooden Ware Co., 211 Pa. St. 645; Erickson *v.* Slate Co., *supra.*

72 It is negligence if the master fails to inspect first the situation himself before sending the servant into it. Oölithic Stone Co. *v.* Ridge (Ind.), 80 N. E. 441.

73 Cunningham *v.* Iron Works, 92 Me. 501, 43 Atl. 106.

74 Railroad Co. *v.* Lattimore, 118 Ga. 581.

75 Sash & Door Co. *v.* Pohlman, 210 Ill. 133.

76 Collins *v.* Harrison, 25 R. I. 489.

have to go searching for latent or hidden defects, and is not made to inspect the appliances furnished him, in order to discover secret imperfections.[77] It has been held that this duty of the employer in respect of appliance is violated by lodging a domestic in a room dangerous to health.[78]

150. Same — Character of Appliance — Selection — Master's Duty.

And yet the master is not in duty bound to furnish the best, newest, or even safest appliances, or to insure the safety of the place or the machinery. His duty is discharged if he uses ordinary care in these particular matters.[79] And his omission of a duty imposed on him by an ordinance for the public benefit does not amount to negligence such as to give a right of action to a servant injured as a consequence of the omission.[80]

Same — Test of Negligence — Res Ipsa Loquitur.

When the machine or other thing — an elevator, for instance — is shown to be under the control of the defendant, and it is shown at the same time that the accident was one that in the ordinary course of affairs does not happen when proper care is used by the persons in control, it affords *prima facie* evidence that there would have been no accident but for the want of due care.[81] The very fact that the machine works badly, irrespective of the cause, makes it a defective

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77 Railway Co. *v.* Tackett, 33 Ind. App. 379.
78 Collins *v.* Harrison, 25 R. I. 489.
79 Lumber Co. *v.* Roy, 26 Fed. 524.
80 Railroad Co. *v.* Hairston, 122 Ga. 372.
81 Ellis *v.* Waldrove, 19 R. I. 369.

machine;[82] although, as a general rule, the bare happening of an accident is no proof of negligence.[83]

151. Same — Servant in Novel Capacity — Duty of Master.

While it is true that no duty is imposed upon the master to warn a servant where, being acquainted already with the particular device, he is in no need of warning; yet failure on the master's part to give such a warning when the work is outside of the servant's regular employment is negligence on his part, since working in the dark thus the servant must be exposed to greater or less danger.[84]

Same — Minor Servant — Initiation — Intelligible Language.

In instructing a minor servant engaged in a hazardous employment the master must use words within his comprehension; plain, simple language, in fact.[85] And when, in a reported case, the master referred the unskilled servant for instruction to the skilled one, and the latter did not give this instruction as expected, the failure was held to have reflected back upon the master so as to render him liable for an injury resulting to the uninstructed servant in consequence of his attempting to perform his work while not knowing how with safety.[86]

152. Same — Risks Assumed by Servant — Ordinary — Fellow Servant.

The ordinary risks incident to his employment which are assumed by the servant include the negligence of

82 Mallon *v.* Waldowski, 101 Ill. App. 367.
83 Vanbuvr *v.* Woolen Mills (R. I.), 60 Atl. 770.
84 Grace & Hyde Co. *v.* Probst, 208 Ill. 147, 70 N. E. 12.
85 Addicks *v.* Christoph, 62 N. J. Law, 786, 43 Atl. 196.
86 Mallon *v.* Waldowski, 101 Ill. App. 367.

a fellow servant.[87] One who engages in work with others takes the chances, not only of his own negligence, but of that of others working in similar capacity with him. In case of injury to him on account of the negligence of either he cannot make the master responsible.[88] The association of a servant with his co-workers is usually closer and his knowledge of their characters, habits, and competency more intimate and exact than that of the master; hence he is better able to protect himself against their negligence than his master can be to protect him. Therefore under the law the duty of employing in the first place fit servants is on the master, and when that duty is discharged the duty of protecting themselves against the negligence of the fellow servants is imposed on the servants.[89]

153. Same — Negligence of Fellow Servant — Same of Master — Discrimination.

However, whether in a given case the duty neglected is that of the master or that of the fellow servant is often hard to determine. The line of demarkation has been defined to be that which separates the work of *construction, preparation,* and *preservation* from the work of *operation*.[90] The duty is on the master to

87 Erickson *v.* Slate Co. (Me.), 60 Atl. 708.

88 Zilver *v.* Graves, 74 N. Y. Supp. 714.

89 Railroad Co. *v.* Hetzer, 135 Fed. 272.

90 "It is the line that separates the work of construction, preparation, and preservation from the work of operation. Is the act in question work required to construct, to prepare, to place in a safe location, or to keep in repair the machinery furnished by the employer? If so, it is his personal duty to exercise ordinary care to perform it. Is the act in question required to operate properly and safely the machinery furnished or to prevent the safe place in which it was furnished from becoming dangerous through its negligent operation?

provide things proper of their kind, have them put up properly and in a proper place, and see to their not being operated afterward in an impaired condition; all this to subserve the safety of the operatives. This done, it is to himself that the operative must look for safety. When servants are engaged in distinctly different duties in the one establishment and one is injured through the negligence of the other in the course of the latter's peculiar work the master is likely to be held for the fellow servant's negligence.[91] It is otherwise, though, if the fellow servant was doing what it was none of his business to do and the servant who was injured was aware of the fact at the time.[92]

154. Same — Negligence of Servant Himself.

The master is not liable if the injury comes about through the employee's own carelessness; nor if it comes about through his doing something he is not required by his master to do. When a man's servant of many years' standing was killed by falling from a freight elevator which he was not called upon to use, and which he had been on but once before, the master was held free from responsibility; none the less, that there had been employed no regular conductor for the elevator.[93]

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If so, it is the duty of the servants to perform that act, and they and not the master assume the risk of negligence in its performance." Railroad Co. v. Needham, 63 Fed. 107, 11 C. C. A. 56.

91 Merritt *v.* Lumber Co., 111 La. 159.

92 Thus where an elevator cage had opposite doors and a bell boy admitted a female domestic by one without the knowledge of the elevator boy who was facing the other. The woman being injured it was held that the employer was not responsible. Pullen *v.* Higgins (Ill.), 74 N. E. 968.

93 O'Donnell v. McVeigh, 205 Ill. 23.

Same — Fellow Servant and Vice-principal — Who Responsible.

To complicate the fellow-servant rule we have the apparently antagonistic vice-principal theory. A vice-principal is one who, while in one aspect a fellow servant, performs personal duties of the master which hardly may be delegated — in the way of construction, preparation, and preservation, for instance, as set forth above: indeed, upon whom has devolved in some manner duties of the master.[94] He is the creature of the circumstances of each case according to how juries choose to look at them. For his negligence, though, the master is responsible; and it is so whether the thus erected vice-principal has nominally the place of foreman, common laborer, or anything else.[95] It will be borne in mind that if the servant has contributed to his injury by his own negligence he cannot put the responsibility on the master.[96]

155. Same — Superior Servant's Malice — Liability of Master — Proof.

Apropos of the imputation of a representative capacity to a superior servant by an aggrieved under servant we might introduce here the case of the arrest of the latter for crime at the instance or instigation of the former; although here, of course, the grievance would be based on malice rather than negligence, so that in strictness the question involved would hardly be that of vice-principal. Where the manager of a

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94 Schillinger Bros. Co. *v.* Smith (Ill.), 80 N. E. 65.

95 Schillinger Bros. Co. *v.* Smith, *supra*; Railroad Co. *v.* Godfrey, 155 Ill. 78; Baier *v.* Selke, 211 Ill. 512.

96 Railroad Co. *v.* Henry (Ind. Sup.), 80 N. E. 624. And see herein §§ 84, 86, and 139.

public house had a servant arrested for theft and the latter, being duly relieved of the charge, sued the master for false imprisonment it was said by Kennedy, J.: "The question in these cases must be whether the employer is liable because from the circumstances there is an implied authority in a manager to act as he did. Such a case must, in fact, to a great extent depend upon its own circumstances." And Darling, J., added: "Unless there was evidence in this particular case that the manager's act was necessary for the protection of the master's property there was no evidence of implied authority to go to the jury."[97]

**156. Same — Master's Knowledge — Effect on Liability.**

In course of the testimony in the case just mentioned the fact transpired that the owner and the manager were in frequent conference, the owner being on the premises very often; indeed, that he was there shortly before the arrest. It was intimated by the court that this went far to relieve him, for the reason that if the arrest had been within his contemplation he would have ordered it himself, instead of leaving it for the manager to do. It is not quite clear how this would be the necessary inference, inasmuch as the disposition of one man to shift a disagreeable duty to the shoulders of another is rather common than otherwise. The fact of the owner's frequent presence would hardly seem to have much bearing on the question either one way or the other. However, this feature of the case was not dwelt upon, it being only one of the facts in a case belonging to a class of cases each

[97] Hanson *v.* Waller, Q. B. (1901), Vol. I, p. 390. And see Edwards *v.* Railroad Co., L. R. 5 C. P. 445.

of which, as has been said already, is to be judged according to its own circumstances.

### 157. Public Nuisance — When Such Exists.

In previous portions of this volume brief allusions have been made to the law of nuisance as it affords a remedy against the owner of leased premises; also as it affords a remedy against the lessee of a house, or portion of a house, in respect of the use he puts the premises to. There is another aspect: that where the proprietor of such a house as this figures as the complaining party, the party offending being the owner of some neighboring property. The law does not relieve against all inconveniences, annoyances, and interruptions which residents of a city suffer. They must endure uncomplainingly the noise and dust caused by travel on the highways. These are necessary evils. The same may be said of manufactures, machine shops, and the like. They are unpleasant neighbors, but not nuisances in all cases.[98] The test of a nuisance refers to whether the thing offending is an unreasonable, unwarrantable, or unlawful use of one's property to the annoyance, inconvenience, or damage of another.[99]

### 158. Same — Renewal of Lease no Waiver.

For the reason that a nuisance is presumed in law not to be permanent each repetition of it is deemed a new nuisance; and so the fact that a tenant renews his lease during the time of its existence is no argument against the right of the lessee to complain of it.[1]

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[98] Cooper *v.* Randall, 59 Ill. 317.

[99] Bly *v.* Edison Elec. Illum. Co., 172 N.Y. 1.

[1] Bly *v.* Edison Elec. Illum. Co., *supra*.

A contrary doctrine, as it has been said, "would soon make a person who created a nuisance the master of all owners and lessees who surround him. For if owners they could not sell to a purchaser or let to a new tenant without great loss to their property, and if lessees they could not assign their terms or underlet without suffering a similar loss."[2]

**Same — Proprietor's Action — Measure of Damages.**

Therefore where the proprietor of an apartment-house is thus aggrieved he may, in his action against the offending party, show, provided such be the fact, that the nuisance has been the occasion of loss to him of tenants and of other loss by his having to reduce rents in respect of other tenants who, though remaining with him, had threatened to leave on account of the nuisance unless such reduction be offered as an inducement to stay. It follows that the measure of damage in such cases is not the rental value of the property, as between the owner and the proprietor, but rather the financial loss in respect of custom; that is, the usable rather than the rental value.[3]

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2 Bly *v.* Edison Elec. Illum. Co., *supra*, citing Smith *v.* Phillips, 8 Phila. 10.

3 Bly *v.* Edison Elec. Illum. Co., *supra*; Hoffman *v.* Same, 84 N. Y. Supp. 437; Bates v. Holbrook, 85 N. Y. Supp. 673; Swift *v.* Brogles, 45 Ga. 885.

# PART III.

## APARTMENT-HOLDER.

# PART III.

## APARTMENT-HOLDER.

## CHAPTER ONE.

### Apartment-Holder and Owner.

**159. Sublessee — Extent of His Estate.**

An undertenant, otherwise called a *sublessee,* has no action against the owner to enforce the latter's engagements made with the principal lessee, although he accepts his own lease subject to the stipulations in the lease between those two.[1] His estate cannot exceed that of his immediate lessor;[2] but this refers to the latter's estate at the time of the making of the sublease, for if by a subsequent agreement with the owner the principal lessee chooses to diminish his estate he does not diminish thereby that of the sublessee without the latter's concurrence.[3] And when a lessee

1 Peer *v.* Wadsworth, 67 N. J. Eq. 191, 58 Atl. 379. But see Jaffe *v.* Harteau, 56 N. Y. 398; Coughtry *v.* Globe Woolen Co., 56 N. Y. 124. Nor may the owner sue the sublessee on any of the covenants of the lessee with him, there being no privity of estate or of action. Williams on Real Prop. 336; Grundin *v.* Carter, 99 Mass. 15; McFadden *v.* Watson, 3 N. Y. 286.

2 Levy *v.* Trimble, 94 N. Y. Supp. 2; Bova *v.* Cappala, 91 N. Y. Supp. 8.

3 Weiss *v.* Mendelson, 53 N. Y. Supp. 803; Eten *v.* Luyster, 60 N. Y. 252; Hessel *v.* Johnson, 129 Pa. St. 173.

has sublet a portion of the premises he may not surrender — exercising his statutory right, but of his own will only — the premises after the destruction of them more or less by fire, etc.[4] A lessee may assign his lease to the owner and take a new one, but the owner's right, unless the sublessee consented, of distress against the latter becomes extinct, whether for default in his lessor's rent or for default in his own.[5]

### 160. Same — Subjection to Terms of Principal Lease — Use of Premises.

An owner may, of course, require a covenant to be made by his lessee in the principal lease restricting the use to which the premises are to be put.[6] The simple expression, "to be used as," without other words, is sufficient to create such a covenant.[7] If there is subsequently a default in the covenant the owner is at liberty to regard this as a forfeiture of the possession, or he may enjoin the objectionable use, just as he may

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[4] Smith *v.* Sonnekalb, 67 Barb. 66. Nor by the bankruptcy of the proprietor. Bramwell, L. J.: "By the Bankruptcy Act of 1869, § 23, upon disclaimer by the trustee the lease is to be 'deemed surrendered.' If this had been a surrender at common law it is clear upon the authorities that this action would not be maintainable." Smalley *v.* Hardinge, L. R. 7 Q. B. D. 524. The action was to dispossess a sublessee after the bankruptcy of the principal lessee: the court held that the sublease stood.

[5] His goods cannot be resorted to in distress for the principal tenant's rent, because the principal tenant's possession was by virtue of a lease which the sublease was not taken subject to. They cannot be distrained for his own rent, because the latter — in order that a distress may be valid — must be due under a demise, and here the estate out of which the demise was carved has been wiped out. Hessel *v.* Johnson, 129 Pa. St. 173.

[6] § 22, *supra;* § 190, *post.*

[7] Maddox *v.* White, 4 Md. 72.

prefer.[8] Here it is that the sublessee has an apparent advantage over the lessee; for he may commit the lessee to such a forfeiture by his own act,[9] whereas, as we have seen, the lessee may not surrender the premises to the owner without the sublessee's concurrence. However, this advantage is only apparent, after all; for if the lessee be innocent of any connivance at the act of the sublessee in violation of the covenant no forfeiture can be enforced against him.[10] It is the same if the violation is of a statutory prohibition.[11]

### 161. Same — Action Against Owner — Obstruction of Light.

A second-floor tenant may have an action against the owner for obstructing his light and means of access to the street, if by erecting a building near to the apartment-house the owner obstructs the other's view and his means of exit from the residence building to

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[8] Maddox *v.* White, *supra.*

[9] § 43, *supra.*

[10] The lease of an inn contained a covenant whereby the lessee stipulated that he would not do or suffer to be done on the premises anything which might cause a forfeiture of, or a refusal to renew the bar license. A sublessee became guilty of such an act causing the refusal feared. An action by the purchaser of the reversion against the assignee of the lessee was held to be not maintainable inasmuch as the sublessee was not the servant or agent of the defendant. Wilson *v.* Twamley, L. R. K. B. D. (1904), Vol. 2, p. 99.

[11] Summary proceedings (see § 98, *supra*) were brought by an owner to dispossess a lessee, on the ground that the premises were used for an illegal business. The illegal use had been had not by the lessee but a sublessee, but connivance was imputed to the lessee by reason of his allowing the sublessee to remain on the premises after his conviction. Conforti *v.* Romano, 98 N. Y. Supp. 194.

the sidewalk.[12] But so far as the light is concerned the apartment-holder would not be permitted to exercise his right arbitrarily.[13] Unless his profession or circumstances are such that the highest possible degree of natural light is essential to him he may not object to a moderate reduction from what he has been accustomed to have. In New York the erection of a building by one owning an adjacent building occupied as an apartment-house would be invalid probably within the spirit at least of the Tenement-House Act,[14] all the provisions of which, so far as they have reference to light and ventilation, have been made to apply as well to apartment-houses.[15]

**162. Same — Owner's Duty to Apartment-Holder — Negligence — Repairs.**

If a sublessee brings an action against the owner of the building for damages for personal injuries received by him through the negligence of defendant in

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12 "All the rights and privileges thereto belonging" include the right to the light and space between the window and the street at the time of renting, so that the building may not, after the lease, be altered so as to interrupt the same. Brande *v.* Grace, 154 Mass. 210. The owner of the building is liable to the sublessee under his covenant with the lessee that the premises shall be suitable and safe for the purposes for which they were let. Jaffe *v.* Harteau, 56 N. Y. 398.

13 Defendants having leased the premises incurred the same liability to the subtenant as the tenant for the safety and sufficiency of the premises for the use for which they were intended. Jaffe *v.* Harteau, *supra*, citing Coughtry *v.* Woolen Co., 56 N. Y. 121. "In this case the lessor seeks to make such changes in the building itself which contains the leased rooms — as will essentially change their character. * * * The lease carries with it an implication that the lessor shall not thus proceed to impair the character and value of the leased premises." Gray, J., in Brande *v.* Grace, 154 Mass. 210.

14 N. Y. Tenement-House Act, § 66.

15 N. Y. Building Code, chap. III, § 9.

connection with making repairs in and about the premises it cannot be upheld as a defense that the plaintiff at the time of receiving the injuries was not rightfully on the premises.[16] And an owner who undertakes to remove the common roof of an apartment-house and put on a new one is bound to exercise all reasonable care to avoid injury likely to result to property of occupants holding apartments there by virtue of valid leases.[17]

**Same — Right of Owner to Dispossess — Covenant in Principal Lease.**

A sublessee in taking possession of his demised premises becomes subject to the terms of the principal lease;[18] if, therefore, in that lease there has been reserved by covenant a right on the part of the owner to dispossess a disagreeable sublessee and let the premises to a new tenant on behalf of the principal lessee that right may be enforced.[19]

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[16] Barron *v.* Liedloff (Minn.), 104 N. W. 289.

[17] Randolph *v.* Feist, 52 N. Y. Supp. 109; Brande *v.* Grace, 154 Mass. 210.

[18] Bova *v.* Cappala, 91 N. Y. Supp. 8; Bruder *v.* Geisler, 94 N. Y. Supp. 2.

[19] Hall *v.* Gould, 13 N. Y. 127. Where a lease contains a provision whereby it is to be canceled at the option of the owner upon the latter's satisfying a condition named, and the owner does satisfy the condition and does act on the option, the sublessee's estate falls with that of his particular lessor. Bova *v.* Cappala, 91 N. Y. Supp. 8; Bruder *v.* Geisler, 94 N. Y. Supp. 2

## CHAPTER TWO.

### APARTMENT-HOLDER AND PROPRIETOR.

**163. Recapitulation — Caveat Emptor — Application to Apartment Lease.**

In Part I,[20] when on the subject of the duty which is imposed on the owner, the question being whether or not he must see that the premises about to go into the hands of the lessee are in good condition, it was shown that this matter was the lessee's lookout altogether,[21] provided there is no suggestion that the owner did not act in good faith.[22] "Fraud apart, there is no law against letting a tumble-down house." In another place[23] this principle was shown to apply as well to the demise of an apartment or a room as to a house and lands.[24] An apartment, it ought to be stated, may be a room or more than one, provided it is only part of a house. In the New York Tenement-House Act we see such expressions as, "*where there are apartments consisting of one or two rooms;*"[25] and again, "*in every apartment of three rooms or*

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20 § 19, *supra*.

21 Gluck *v.* Baltimore, 81 Md. 326.

22 Meyers *v.* Rosenbach, 25 N. Y. Supp. 521. But premises having been leased to a tenant through false representations by the landlord as to the furnace, it was held that the tenant did not waive the objection by paying rent, but that he might remain in and sue for damages for the false representations. Pryor *v.* Foster, 130 N. Y. 171, 29 N. E. 123.

23 § 69, *supra*.

24 § 79, *supra*.

25 § 95, *supra*.

*more,*" etc.;[26] so that an apartment seems to be about the same as what is indicated by the expression "a suite of rooms," or one room, just as the case may be.

**164. Caveat Emptor — Demise of a Furnished House or Apartment.**

To go further into the principle outlined above, when the house and lands subjected to the demise are so dilapidated as to render an expenditure of more or less money necessary to put them into good shape it would be contrary to the intention of the parties that this expense be entailed upon the lessor. But it is said it is different when a person takes a furnished house for a temporary residence at a watering place. It is clear that he expects to find it reasonably fit for occupation from the very day on which he intends to enter;[27] and the lessor is well aware that this is the view entertained by the tenant. Nor need the intending tenant call attention to the defects and then go away and lodge elsewhere while repairs are being made and afterward recover of the landlord what his lodgings

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26 § 75, *supra.*

27 Wilson *v.* Finch-Hatton, L. R. 2 Exch. Div. 336 (following Smith *v.* Marrable, 11 M. & W. 5, where the house was invested with bugs). But Justice Depue holds that Wilson *v.* Finch-Hatton, where the defect was in the premises themselves, was wrongly decided; because the ground of the decision in Smith *v.* Marrable, as stated by Lord Abinger, in Sutton *v.* Temple afterward, was that "the contract implied that the furniture let with the house shall be fit for the use and occupation of such a house and suitable in every respect for use." Quoting Addison on Contracts (8th ed.), 293, the justice goes on to say that these are contracts of a mixed character, partaking of the nature partly of a demise of realty and partly of a letting and hiring of movable chattels, so that there are two duties in the landlord. Murray *v.* Albertson, 50 N. J. Law, 167. And see Franklin *v.* Brown, 118 N. Y. 110.

cost him; but when such a house is in such a condition that there is involved either great discomfort to the person or danger to health in entering it, then the intending tenant is entitled to repudiate the contract altogether.[28] It is unnecessary to say that under the same conditions the same idea would underlie the demise of a furnished apartment.[29]

**165. Same — Concealment by Lessor — Defects.**

Notwithstanding that the landlord is under no obligation to see that the premises he lets, except as has been noted above, are fit for occupation he is in duty bound to refrain from actual concealment of defects that he very well knows to be there.[30]

**Same — Entry in Reliance on Promised Repairs No Waiver.**

In cases where the presence of the defect is known to the parties before the formal change of possession and the tenant nevertheless enters upon the premises under promise by the lessor to repair, this does not waive the objection;[31] though it is to be remembered that such a promise made after the tenant's entry is without consideration and void.[32] And *caveat emptor* does not apply where, after taking rent in advance, the landlord cannot deliver possession.[33]

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28 Wilson *v.* Finch-Hatton, L. R. 2 Exch. Div. 336.

29 Shaw, J., in Dutton *v.* Gerrish, 68 Mass. 89, cited by Pollock, J., in Wilson *v.* Finch-Hatton, *supra*.

30 Meyers *v.* Rosenbach, 25 N. Y. Supp. 521; Pryor *v.* Foster, 130 N. Y. 171, 29 N. E. 123. And he is made liable for false representations of his agent in that respect on which the tenant acted. Meyers *v.* Russell (Mo. App.), 101 S. W. 606.

31 Meyers *v.* Rosenbach, *supra*.

32 §§ 35 and 82, *supra*.

33 *Caveat emptor* does not relieve the landlord who has taken rent in advance and is thereafter unable to deliver the demised apartment

**Same — Defects — Not Mechanical Merely — Disease Infection — Vermin.**

The lessor's obligation to refrain from concealment of defects does not refer to mechanical defects exclusively. The letting at a time the tenement, to the knowledge of the lessor, was infected with disease would open the lessor to liability in case the lessee or one of his family afterward took the infection.[34] A pest of vermin about the premises might entitle the lessee to reject the latter.[35]

**166. Same — Subject-Matter of Lease — Landlord's Duty — Liability.**

And while we are speaking of things that may be looked on as in the way of disappointing the expectations of the tenant the question of fixtures may be taken up again, though not, as before, in so far as it concerns the right of the tenant in taking away things claimed to be fixtures by the landlord. The reference here is to the landlord himself taking away so-called fixtures from the demised premises. A lessee, like any other purchaser, cannot be denied the right, of course, to demand that which was agreed to be given him, and, therefore the subject-matter of the lease must be held intact for him until such time as he is to assume possession. If a lease has been duly entered

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on the day contracted for the lessee to enter — the house not being ready and the certificate required under section 122 of the Tenement-House Act not issued. Meyers *v.* Liebeskind, 91 N. Y. Supp. 724.

[34] Cesar *v.* Karutz, 60 N. Y. Supp. 229; Minor *v.* Sharon, 112 Mass. 477.

[35] Smith *v.* Marrable, 11 M. & W. 5. In this connection Lord Abinger said: "No authorities are needed, and the case is one which common sense enables us to decide."

into and afterward, but before the lessee shall have actually taken possession, the lessor removes fixtures from the premises the act is a breach of his duty to take reasonable care in respect of the preservation of the subject-matter of the lease, and for this the lessee has an action.[36]

**167. Landlord's Duty — Undemised Parts of the House — Repairs.**

As in the case of any other property[37] a demise of an apartment, unless there is in it a covenant to that effect, does not contemplate that the landlord shall keep the premises in repair.[38] Nevertheless, and without the necessity of so covenanting, he must keep in repair the undemised parts of a building which is let in portions separately, those parts which are used in common by all the tenants.[39] For the duty to repair depends upon the right of possession, and an appurtenance, as here, attached to and made for the accommodation of several different tenements remains in the landlord's possession though the use of it goes to the tenants.[40] In a comparatively recent case in England this duty of the landlord's was held to be absolute;[41] but Lord Chief Justice Alverstone, commenting

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36 Sachs *v.* Henderson, K. B. D. (1902), Vol. I, 612.

37 § 24, *supra.*

38 Gluck *v.* Baltimore, 81 Md. 326; Kushes *v.* Ginsburg, 91 N. Y. Supp. 216; Purcell *v.* English, 86 Ind. 34.

39 Sawyer *v.* McGillicuddy, 81 Me. 318.

40 Sawyer *v.* McGillicuddy, *supra.* The principle as stated in the text — same being quoted from the above case — will be found, on reflection, to be the principle of an easement, only expressed otherwise than in § 67, *ante.*

41 Miller *v.* Hancock, Q. B. D. (1893), Vol. 2, 177, commented on in Hargraves *v.* Hartopp (below), by Lord Alverstone.

on that *dictum* in a very strong and clearly expressed opinion in a later case, said it went too far, but that the landlord was charged with reasonable care certainly in having these parts kept in safe condition.[42]

### 168. Same — Landlord's Default in Such Duty — Injury to Tenant — Liability.

When this duty is neglected with an injury to one of the tenants resulting the landlord is accountable in damages.[43] The proprietor of an apartment-house is liable when such injury has been caused by his negligence in maintaining the stairs,[44] halls,[45] and ways of passage[46] over which he retains control and which are used in common by the various tenants. So also where the negligence was in the having a roof in bad order;[47] and a trapdoor in a hallway.[48] And where a flight of stairs was covered with a carpet so ragged that it tripped a tenant and threw him down the stairs.[49] Also where the defect was in the stairway to a roof and the plaintiff was injured while ascending in order to clean a chimney communicating with his fireplace.[50] And a defective footing on a roof where the tenants

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42 Hargraves *v.* Hartopp, K. B. D. (1905), Vol. I, 472. See also Carstairs *v.* Taylor, L. R. 6 Exch. 217.

43 Peil *v.* Reinhart, 127 N. Y. 385. See Part II, § 80; Walsh *v.* Frey, 101 N. Y. Supp. 774.

44 Dollard *v.* Roberts, 130 N. Y. 269.

45 Canavan *v.* Stuyvesant, 27 N. Y. Supp. 413.

46 Canavan *v.* Stuyvesant, *supra*. See also Hoag *v.* Savings Bank, 78 N. Y. Supp. 141.

47 Golob *v.* Pasinsky, 178 N. Y. 458.

48 Elliott *v.* Pray, 10 Allen, 378.

49 Peil *v.* Reinhart, 127 N. Y. 381.

50 Cooper *v.* Lawson (Mich.), 103 N. W. 168.

were expected to hang their clothes out to dry.[51] And a defective platform in front of several tenements and intended for the use of all.[52] And an awning in such bad condition that injury came to an occupant of one of the several tenements to which it was appurtenant.[53]

**169. Same — Mechanical Contrivances for Common Comfort — Landlord's Duty.**

This duty of the landlord extends also to the keeping in a safe working order such mechanical contrivances as are put into the house for the comfort of all the tenants. In the case of water pipes ramifying the building one tenant easily might suffer injury from the carelessness of another in manipulating faucets, etc. That, of course, would not of itself entail liability upon the landlord;[54] however, he must manage to have the proper appliances for the control of water introduced into the house.[55] Responsibility would ac-

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51 Ronillon *v.* Wilson, 51 N. Y. Supp. 430; Looney *v.* McLean, 129 Mass. 33.

52 Readman *v.* Conway, 126 Mass. 374.

53 Milford *v.* Holbrook, 9 Allen, 17.

54 Brick *v.* Favilla, 101 N. Y. Supp. 970. See §§ 165 and 166, *post.*

55 While not responsible for the negligence of a tenant whereby an injury comes to a fellow tenant in the mismanagement of appropriate fixtures in this connection, a proprietor is bound to have proper appliances for the control of the water introduced into the premises. Citron *v.* Baylay, 55 N. Y. Supp. 382. Where defendant had let a lower floor to plaintiff, himself occupying the upper and allowing to get out of repair his waste pipe that penetrated plaintiff's premises so that by leakage from the pipe plaintiff was damaged, the court said: "The rule that a landlord is not bound to keep the premises of his tenant in repair and, therefore, cannot be held responsible for negligence if out of repair has no reference to the facts in this case." Priest *v.* Nichols, 116 Mass. 401. See also Toole *v.* Beckett, 67 Me. 544. Where a tenant on a lower floor is injured by the flowing of water from the bathtub and water fixtures situated above, he has a right of action against

crue to the landlord for injuries received in consequence of an unsafe elevator.[56] Also for a defective waste pipe in the plumbing system whereby the tenant should suffer injury.[57] These are but a few of many illustrations of defects calculated to bring the landlord into damage suits. But an ineffective furnace or the dispensing of insufficient heat in the premises of the several tenants entails no liability upon the landlord, even if sickness or death has been the alleged result.[58]

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the landlord if the overflow results from their improper construction, and this liability exists without reference to the occupancy of the upper floor by another tenant. But if the water fixtures be skillfully planned and safely constructed to guard against overflow, and the upper apartments are rented to and in the exclusive possession and control of a tenant, then the landlord is not liable and the person damaged must look for redress to his fellow tenant, if he can fix negligence upon him. When the upper rooms are not rented to, nor in the exclusive control of a tenant, but both landlord and tenant have the right of use — neither exclusively — then the landlord is liable to the tenant below. Jones *v.* Freidenburg, 66 Ga. 505.

56 Rosenberg *v.* Schoolherr, 101 N. Y. Supp. 505, and cases there cited — although the elevator in fault there was for freight strictly and there was no compulsion to use it, there being also a passenger elevator in the building. If the defendants leased rooms in the building to different tenants, reserving to themselves the control of the halls, stairways, and elevator, by and through which access was to be had to these rooms, and the general lighting arrangements of those passages, then the defendants were bound to take reasonable care that such approaches were safe and suitable at all times and for all persons who were lawfully using the premises and using due care, so far as they ought to have reasonably anticipated such use as involved in and necessarily arising out of the purposes and business for which said rooms were leased. Plummer *v.* Dill, 156 Mass. 426.

57 See last note.

58 Dancy *v.* Walz, 98 N. Y. Supp. 407. And see Eschbach *v.* Hughes. 27 N. Y. Supp. 320.

**170. Same — Injury While Perverting a Utility — No Liability on Landlord.**

It is questionable, though, if responsibility rests upon a landlord in any case where the injury has resulted to one while using the common utility for some purpose for which it plainly was not intended.[59]

**Same — Necessity of Notice to the Landlord — Knowledge of Agent.**

Negligence may not be imputed to a landlord when he had been given no notice of the necessity for repairing in respect of the defect which brought about the tenant's injury;[60] but notice to the agent of the landlord commits the latter just as much as if it had been brought to him immediately.[61]

**Same — Tenant's Knowledge of Defect — Contributory Negligence.**

Contributory negligence is charged to a tenant who, knowing of the presence of the defect, exercises no care to keep himself out of the way of receiving injury on account of it.[62] However, when the thing thus well to be avoided affects some feature of the common premises, which virtually is indispensable in using those premises at all, the rule of contributory negli-

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59 See § 81, *supra*. But see Rosenberg *v.* Schoolherr, *supra*, where a servant was riding on a freight elevator when there was a passenger elevator in the building.

60 For definition of "notice" see § 84, *supra*, note.

61 See § 84, *supra*. See also Beck *v.* Carter, 68 N. Y. 291; Murphy *v.* Brooklyn, 118 N. Y. 579.

62 See § 84, *supra*. In case of injury to a child if it can be shown that the parent omitted the duty of watchfulness over it, contributory negligence is made out. Muller *v.* Menken, 26 N. Y. Supp. 801. But see Chicago *v.* Hesing, 83 Ill. 204.

gence is not to be so rigidly enforced in case of his injury through placing himself in the peril.[63]

171. Same — Landlord's Duty Extends to Tenant's Family — Servant.

For an injury to a member of the tenant's family, living with him on the premises, the landlord is liable just as much as if it had been to the tenant himself;[64] and so also for an injury to a servant of the tenant, living with the latter on the premises.[65] But any one in either of these relations cannot sue for injuries received under circumstances that would not entitle the tenant to damages if the injuries had occurred to him instead.[66]

Same — Landlord's Duty — Maintenance of Elevator.

If a passenger elevator is in operation in the house the use of it is implied by the lease to be granted with the premises, and it is the landlord's duty to keep and maintain it for the safety of those concerned.[67] In its attitude toward a proprietor in this connection and in that toward what is called *a carrier for hire* the law is the same;[68] and the negligence of the person employed to conduct the elevator is imputed to the landlord just as the negligence of an employee of a railroad company is imputed to the corporation.[69]

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63 Dollard *v.* Roberts, 130 N. Y. 269. And see Peil *v.* Reinhart, 127 N. Y. 383.

64 Dollard *v.* Roberts, *supra.*

65 Springer *v.* Ford, 189 Ill. 430.

66 Moynehan *v.* Alleyn, 162 Mass. 272.

67 Springer *v.* Ford, 189 Ill. 430.

68 Springer *v.* Ford, *supra:* Treadwell *v.* Whittier, 80 Cal. 266.

69 Springer *v.* Ford, *supra.* The elevator man is required to have skill and experience. Marker *v.* Mitchell, 54 Fed. 637. Where a

**172. Same — Elevator Perils — Liability — Exemption Clause in Lease Void.**

The fact that the lease contains a clause — when such is the fact — relieving the lessor of liability in case of injuries occasioned by a failure to keep the apparatus, etc., in the proper condition would not be effective to give the relief intended in case the injury occurred to the lessee's servant, for the reason that a carrier of persons cannot limit his liability to a passenger except by express contract with the passenger.[70] Indeed, a clause to such an intent contained in a lease would not have the effect to lift the responsibility off the lessee's shoulders even where the injured person was the lessee himself, in a case where the landlord has been guilty of neglect of proper care, attention, supervision, and inspection of the machinery and appurtenances of the elevator.[71] And it would appear that in these cases the rule of contributory negligence is not enforced against the injured party, to the length it is in the majority of personal injury cases, in order to reduce the defendant's liability.[72]

**173. Demised Premises — Tenant's Obligation to Repair — Effect of Covenant.**

We know that, except where the landlord has assumed expressly by covenant the duty to repair, that

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tenant entered the hall and seeing the elevator boy sitting by the elevator entrance in a nodding attitude, said entrance being open, walked in and so fell to the bottom of the shaft, the proprietor was held responsible, although at the time of the accident the elevator car was — as a matter of fact — on the level of the floor above the hall mentioned. Dawson *v.* Sloane, 100 N. Y. 620.

70 Springer *v.* Ford, *supra.*

71 Griffin *v.* Manice, 62 N. Y. Supp. 364.

72 An elevator for the carriage of persons is not like a railroad crossing at a highway — supposed to be a place of danger, to be ap-

duty rests on the tenant.[73] This being so, except by way of calling the tenant's attention to his duty, the landlord has no particular purpose to serve in asking of the tenant an express covenant to that end; unless the design is to have him do something more than the usual repairing. If the tenant actually makes the express covenant he is, of course, to be held to it strictly:[74] although not so that an obligation be imposed upon him to do anything beyond what his intention was at the time the covenant was made. So when a tenant covenanted with his landlord to participate with him in the expense of heating the premises it was held that the implication here was not that he was to share with him the cost of putting up the plant and keeping it in repair, and to suffer in part at last whatsoever loss should result from its depreciation by use.[75]

### 174. Same — Extent of Covenant — Tenant's Default — Landlord's Resort.

A covenant to keep the premises in repair means no more than to keep them in a condition as good as they were in at the time of the change of possession.[76]

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proached with great caution; but, on the contrary, it may be assumed, when the door is opened by the attendant, to be a place which may be safely entered without stopping to look, listen, or make a special examination. Tousey *v.* Roberts, 114 N. Y. 316.

73 Witty *v.* Mathews, 52 N. Y. 512. See note 15, *supra.*

74 Generally the covenant in a written lease will be construed most strongly against the party upon whom the duty so created rests, and if the duties balance, upon both. Beckwith *v.* Howard, 6 R. I. 1. Where the tenant's liability to repair is fixed by express covenant no covenant or promise in that regard is implied. Merrill *v.* Frame, 4 Taunt. 329.

75 Stanwood *v.* Comer, 118 Mass. 127.

76 Middlekauff *v.* Smith, 1 Md. 329; Stultz *v.* Locke, 47 Md. 562; Gutteridge *v.* Munyard, 7 Car. & P. 129. And see § 18, *supra.*

Where the tenant has covenanted to repair and afterward refuses to repair, notwithstanding the covenant, this does not give the landlord liberty to have repairs made recklessly and without reason in respect of expense and then to charge the tenant accordingly, even though the covenant might have contemplated the particular repairs made.[77]

**Same — Landlord's Duty to Repair — Default — Tenant's Rights.**

But if by the terms of the lease the duty to repair rests on the landlord and he persistently neglects to perform, this gives the tenant no right to abandon the premises unless performance was a condition precedent.[78] In the same circumstances the tenant could not claim that he had been evicted, because his duty then would be to repair the premises himself and charge the expense to his defaulting landlord.[79] But, unless the parties have agreed otherwise, by statute no rent may be exacted when the premises have become untenable because of the elements or for some other cause, the occupant not being in fault.[80]

**175. Same — Lessee's Covenant to Repair — Rights Resulting to Sublessee.**

A subtenant acquires no rights by his lessor's agreement with the owner to repair.[81] We have seen before that he is entitled to very little consideration by

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77 Harris *v.* Brown, 53 N. Y. Supp. 938.

78 Doolittle *v.* Selkirk, 28 N, Y. Supp. 43.

79 Doolittle *v.* Selkirk, *supra.*

80 Laws of N. Y. (1860), chap. 345; Meserole *v.* Hoyt, 161 N. Y. 59. So also in Minnesota. Boston Block Co. *v.* Buffington, 39 Minn. 385.

81 Clancy *v.* Byrne, 56 N. Y. 129.

reason of any previous transactions between those two.[82] If the principal lessee has made a covenant with the owner the sublessee is bound even if it had not been disclosed to him; and if aggrieved, he has no action against the principal lessee unless he is able to show fraud.[83]

**Same — Proprietor's Duty as to Demised Parts of the House.**

When the subject-matter of the lease is an apartment in a building no implied duty rests upon the landlord to keep the premises in repair any more than would be the case if the subject-matter were premises of a larger character. In regard to both it would be necessary to have him covenant expressly in order that he be charged with the duty.[84] What has just been said has no application, it needs not to be added, to demises in those States where statute imposes the duty upon the landlord.

**176. Same — Landlord's Covenant to Repair — Default — Tenant's Recourse.**

When such a covenant has been entered into and subsequently broken the measure of damages for the breach is the expense of doing the work which had been agreed to be done. A covenant of that sort does not contemplate that damages for any personal injuries that might be the result of the defective condition of the premises may be recovered of the landlord in case of breach; because if the landlord defaults it

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[82] §§ 43, 159, 160, *supra*.

[83] Jones *v.* Lavington, L. R. K. B. D. (1903) Vol. I, 253.

[84] Witty *v.* Mathews, 52 N. Y. 512.

becomes the duty of the tenant himself to repair. The expense he is put to for these repairs is made good to him through his withholding rent to an amount sufficient for the purpose; and if he is sued for the whole rent by the landlord he can set up this expense by way of counterclaim.[85] Indeed, it is commonly said that in case the landlord is thus indifferent to the needs of the property the tenant ought to show the lacking solicitude and endeavor to keep the damage within the smallest possible limits by putting in timely repairs, notwithstanding the landlord's obligation under his covenant.[86]

### 177. Same — Landlord's Default in Covenant — Substantial Defects — Tenant's Recourse.

If by reason of the landlord's stubborn withholding of repairs, in a case where he is under an obligation to make them, the recourse of the tenant is to move out of and abandon the premises. Afterward in the event of his being proceeded against for rent, on the theory that although he is not actually occupying the premises they are still in his possession under the demise, he may defend on the ground of his having been evicted.[87] To illustrate: a plaintiff had leased a basement from the defendant, other tenants having the rooms overhead. The roof over the upper story became damaged by fire and the fire, although it did not extend below, rendered plaintiff's premises untenant-

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85 Schick *v.* Fleischauer, 49 N. Y. Supp. 962. The measure of damages upon breach of a landlord's covenant to repair is the cost of the repairs, or the difference in value of the premises in a good and in a damaged condition. Beakes *v.* Holzman, 94 N. Y. Supp. 33.

86 Beakes *v.* Holzman, *supra*.

87 Meyers *v.* Burns, 35 N. Y. 269; 2 Taylor's Landlord and Tenant (8th ed.), 381.

able. Defendant did not have the repairs completed until six weeks or thereabout had passed and meantime plaintiff's goods were injured. It was held that he might have moved out temporarily and have withheld rent, but he could not remain in the building and force the landlord to protect him while so remaining.[88]

178. **Same—Action on the Contract — Negligence —When Actionable.**

The relations between the lessor and lessee created by the agreement savor of contract wholly and, as a rule, no liability in the landlord for negligence grows out of them. There are apparently exceptional cases where some such liability attaches to him; but in those cases the cause is not immediate, but is based on either the breach of some duty implied as the result of entering into the contract or an injury growing out of the improper manner of doing some act which the contract provided for. But the mere violation of the contract when there is no general duty is no subject for an action of tort.[89] When the landlord assumes to make repairs, although not required by his lease to make them, he is responsible for any damage that may result to the tenant when it arises from his lack of skill in carrying out what he has undertaken to do.[90] And not only so, but it would be the same were the lack of skill not his own but that of some contractor he has chosen to do the work for him.[91]

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88 Doupe *v.* Genin, 45 N. Y. 119.

89 Courteney *v.* Earle, 10 C. B. 83; Tuttle *v.* Manufacturing Co., 145 Mass. 169.

90 Gill *v.* Middleton, 105 Mass. 477; Gregor *v.* Cady, 82 Me. 131.

91 Wertheimer *v.* Saunders, 95 Wis. 573; Sturges *v.* Society, etc., 130 Mass. 414; Devlin *v.* Smith, 89 N. Y. 470; Engel *v.* Eureka Club, 137 N. Y. 181.

**179. Condition Against Subletting — Must Be Construed Reasonably.**

A condition in a lease intended to restrain the lessee from subletting is not to be construed arbitrarily so as to violate or strain the reason underlying it; and so where a tenant upon absenting himself from the premises left a servant there to occupy and take care of them it was held that this did not amount to a breach of the condition.[92]

**Rent — Distress for His Superior's Default — Sublessee's Redress.**

The purpose of the law of distress goes to the payment to the landlord rather than the depriving an innocent person of his money or goods; therefore, it is the right of the sublessee, after suffering a distress for the delinquency of his lessor, to deduct from any rent he may owe the latter the amount taken from him in the distress proceedings to pay the owner.[93]

**Same — Advanced Rent — Fire — Recovery Back Unearned Part.**

When a lessee has paid his rent in advance and afterward a fire destroys the premises he is entitled to the unearned part of the rent so advanced and it must be returned to him;[94] but the law does not warrant his remaining in the ruined building in the expectation that the landlord will protect him.[95]

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92 Presby *v.* Benjamin, 169 N. Y. 377.

93 Lageman *v.* Klappenburg, 2 E. D. Smith, 126.

94 Porter *v.* Tull, 6 Wash. 408.

95 § 172 *supra.*

180. Eviction — Present General Acceptation of the Term.

The word *eviction* was formerly used altogether to denote an expelling by the assertion of a title paramount and by a process of law. But that sort of eviction is not necessary as a ground for a suspension of rent, in which connection the word is usually employed to-day. It is well settled that if the tenant loses the benefit of the enjoyment of any portion of the demised premises through an act of the landlord the rent is thereby suspended. The word is applied with propriety now to any sort of expulsion or a motion of the tenant; not a mere trespass and nothing more, but something of a grave and permanent character done by the landlord with the intention of depriving the tenant of the enjoyment of the demised premises.[96] Acts of the landlord in interference with the tenant's possession, to constitute an eviction, must indicate clearly a design on the part of the landlord that the tenant shall continue no longer on the premises.[97]

181. Same — Facts Such as Entitle the Tenant to Claim an Eviction.

Eviction is a mingled question of law and fact, the law inferring the intention from acts of the landlord tending to deprive the tenant of the beneficial use of

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96 Jervis, L. C. J., in Upton *v.* Townsend, 84 E. C. L. 30.

97 Morris *v.* Tilson, 81 Ill. 607, and cases there cited. Where the acts of the lessor that give to the case, whatever it may be, the character of an eviction includes his intent to deprive, etc., the intent is to be presumed from the acts themselves. Upton *v.* Townsend, *supra*. If the wrongful acts of the lessor upon the demised premises were such as permanently to deprive the lessee of the beneficial enjoyment of them, and in consequence the lessee abandoned the premises it would be an eviction. Skally *v.* Shute, 132 Mass. 367.

the premises.[98] The question depends, therefore, on the circumstances of each case.[99] It should be made to appear that the landlord has neglected his duty persistently and that the apartment has become unfit for occupancy as a consequence.[1] If he suffers to be done on the premises things which make departure necessary for the tenant this is equivalent to an eviction.[2] When a landlord erected a building so close to the demised premises as to cut off his tenant's light and air it was held to be an eviction.[3] It was so held, too, where the tenant, after entering under a lease requiring him to keep the premises in a cleanly condition, found an open sewer, until then unknown to him, under them; which sewer, in spite of continual work to abate the nuisance, became more and more noisome on account of the landlord's hotel next door.[4]

**182. Same — Grounds for the Claim — Tests of Sufficiency.** If a claim of eviction is made on the ground of unpleasant odors about the premises it is not sufficient that they are merely disagreeable and offensive to the nose; they must be serious enough to menace life or health.[5] Even then they would be hardly sufficient if the tenant had been offered ample opportunity to inspect the premises before making an entry and had failed to grasp it by way of precaution.[6] If the claim

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98 Dennick *v.* Ekdahl, 102 Ill. App. 199; Upton *v.* Townsend, *supra;* Skally *v.* Shute, *supra.*

99 Hayner *v.* Smith, 63 Ill. 430.

1 Humes *v.* Gardner, 49 N. Y. Supp. 147.

2 Tallman *v.* Murphy, 120 N. Y. 345.

3 Royce *v.* Guggenheimer, 106 Mass. 201; Sherman *v.* Williams, 113 Mass. 481.

4 Sully *v.* Schmidt, 147 N. Y. 248. And see Thalheimer *v.* Lempers, 1 N. Y. Supp. 470.

5 Latters *v.* Coates, 41 N. Y. Supp. 373.

6 Flannery *v.* Simonds, 93 N. Y. Supp. 544.

rests upon indications of lack of safety about the premises by reason of possible fire or collapse the test must be actual danger rather than mere inconvenience.[7] Petty annoyances do not avail as a claim.[8] So where the grievance was a sickening odor of coal-gas and burning wood, and a persistent cloud of smoke in the rooms so that the tenant apprehended fire continually.[9] Thus it appears that it is not merely bare pretexts that the law bars as grounds for basing the claim but even what often the tenant imagines to be a matter of serious concern, which nevertheless is not a substantial grievance.

183. Same — Sufficient Grounds — Palpable Fault of the Landlord.

In a case where the grievance availed of by the tenant to abandon the premises was sewer gas resulting from defective plumbing in some part of the house not in the possession of himself, which grievance the landlord would not respect so far as to have the plumbing attended to, it was held there was an eviction, even though at the time of the abandonment repairs were actually in progress at last under compulsion from the health office.[10] So, too, where the peril is to moral rather than physical health: for instance, where the landlord brought prostitutes into another part of the building.[11] But when it is complained that such per-

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7 Latters *v.* Coates, *supra.*

8 Humes *v.* Gardner, 49 N. Y. Supp. 147. See also Tallman *v.* Murphy, 120 N. Y. 345.

9 Tallman *v.* Earle, 23 N. Y. Supp. 17.

10 Marks *v.* Dellaglio, 59 N. Y. Supp. 707. See also Latters *v.* Coates, *supra.*

11 Dyett *v.* Pendleton, 8 Cow. 727; Lay *v.* Bennett, 4 Colo. App. 252.

sons have been admitted as tenants it must be shown that the landlord when admitting them was aware of their characters.[12] It has been held to be an eviction when gambling, unseemly sports, and profane and improper language were allowed to be indulged in in another part of the building but near enough to the premises of the vacating tenant to be a substantial discomfort.[13]

184. Same — Interference by Landlord — Prying, etc.— Common Utilities.

After the demise and the passing accordingly of the possession to the tenant from the landlord the latter has no business on the premises except by the other's invitation, the tenant being supreme there during his term. Not only a formal entry may interrupt his quiet enjoyment, however, but this may be effected through petty acts of intrusion, etc.; such acts may afford the tenant good grounds for claiming an eviction. It was so held in a case where the proprietress, a woman of hasty temper, prying and officious, made verbal and physical assaults upon her tenants continually and when they threatened to quit said they "must go." And eviction may be imputed to interference in respect of not only demised premises, but the enjoyment of

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12 Cougle *v.* Densmore, 57 Ill. App. 591; Gilhooley *v.* Washington, 4 N. Y. 217; De Witt *v.* Pierson, 112 Mass. 8.

13 Rowbotham *v.* Pierce, 5 Houst. (Del.) 135. In Smith *v.* Marrable (11 M. & W. 5), where a tenant entering a furnished house found it was infested with bugs, the court held he was justified in abandoning it. In Thomas *v.* Nelson (69 N. Y. 118) the trouble was a defective flue which rendered occupancy of the premises uncomfortable and inconvenient and, the court said, would have justified an abandonment had not the tenant previously agreed with the landlord to repair and charge to the latter the expense.

the common utilities in an apartment-house.[14] Thus the claim of eviction was allowed in a case where the landlord suddenly and arbitrarily excluded the tenant's servant from the use of the elevator.[15]

**185. Same — Facts Insufficient as Basis of Claim.**

But when the terms of the lease gave the landlord liberty to suspend the running of the elevator when in bad order and resume its operation as speedily as possible it was held that after such a suspension the time taken, if reasonable, for making the repairs warranted no claim for eviction.[16] A restaurant in an apartment-house is not an indispensable appurtenance so that its mismanagement or removal would give a good claim for eviction, the lease being silent on the subject.[17] There being a pump in the cellar, if properly constructed and operated, would not sustain the claim.[18] Neither would the disturbing noise of children in another apartment.[19] Failure of the landlord to remove his own property from the premises would afford no basis for the claim, since the tenant might remove them himself very well and put the expense of doing so upon the landlord.[20] Acquiescence of the landlord and his failure in prevention where the house has been torn down by the public anthorities does not amount to a forcible eviction.[21]

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14 Wyse *v.* Russell, 37 N. Y. Supp. 685.
15 Eschmann *v.* Atkinson, 91 N. Y. Supp. 319.
16 Ardsley Hall Co. *v.* Tirrett, 86 N. Y. Supp. 792.
17 Gale *v.* Heckman, 38 N. Y. Supp. 85.
18 McLaughlin *v.* Boehm, 45 N. Y. Supp. 745.
19 Seaboard Realty Co. *v.* Fuller, 67 N. Y. Supp. 146.
20 Baumgardner *v.* Cons. Copying Co., 44 Mo. App. 74.
21 Hitchcock *v.* Bacon, 118 Pa. St. 272.

186. Same — Transparent Claim of Eviction.

As was said incidentally somewhere above, the claim of eviction is given no legal effect when the tenant in his desire to vacate the premises uses it merely as a pretext. It was so held in a case where the alleged grievance was an insufficiency of artificial heat in the premises. The proof showed that the tenant had delayed his departure until the month of April, and the court was of the opinion that that was too late in the season for such a complaint to be relevant and that by that time the full enjoyment of the premises had been restored.[22]

Same — Complaint Should Be Made Within Reasonable Time.

And yet in all cases abandonment of the premises without any delay at all after discovery of the nuisance is not feasible; besides it is not absolutely necessary.[23] It must be borne in mind what was the text of this discussion, namely: that the question of eviction rests upon the circumstances of each case. When, though, the tenant plainly has a right to abandon the premises on account of their uninhabitable condition he must act upon the right within a reasonable time.[24]

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22 Ryan *v.* Jones, 20 N. Y. Supp. 842. See also Cougle *v.* Densmore, 57 Ill. App. 591, and De Witt *v.* Pierson, 112 Mass. 8. In the last cited cases it was intimated that even had not the respective plaintiffs been defeated on another point (see note 79, *supra*) their delay in setting up their grievance gave the latter the appearance of a mere pretext for withholding rent. And see Sully *v.* Schmidt, 147 N. Y. 248, 41 N. E. 514.

23 Marks *v.* Dellaglio, 67 N. Y. Supp. 736. But see Realty Co. *v.* Fuller, 67 N. Y. Supp. 146.

24 Stein *v.* Rice, 51 N. Y. Supp. 320. And see note 90, *supra*.

187. Same — Entry by Landlord to Repair — Trespass — Eviction.

A landlord who has not so covenanted as in some way to reserve the right of entry cannot enter during the term without trespassing upon the premises even though for the purpose of making repairs.[25] But if there is evidence of consent by the tenant to the repairing recovery of rent cannot be resisted successfully on the ground of eviction.[26]

Same — Default in Landlord's Promise to Repair.

The statement made here once before may bear repetition,[27] that the fact that a landlord after agreeing to put in repairs has failed to act in conformity with the agreement is no valid ground for the tenant's abandoning the premises, unless the agreement amounted to a condition precedent.

Same — Implied Waiver of Claim — Tenant Held for Rent.

If in any particular case the circumstances are such that the tenant, if so disposed, would have a perfect right to abandon the premises, regarding himself as evicted, he may not nevertheless remain in occupancy until the end of his term, withholding rent meanwhile, and afterward plead eviction by way of counterclaim in an action for the rent so withheld.[28]

188. Same — Rent in Case of Wrongful Eviction.

A landlord's wrongful eviction of a tenant from the whole or any part of the demised premises suspends

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25 See § 23, *ante*. See also Barnecastle *v.* Walker, 92 No. Car. 198.

26 Rosenbloom *v.* Finch, 76 N. Y. Supp. 902.

27 See § 82, *supra*.

28 Edgerton *v.* Page, 20 N. Y. 281; Boreel *v.* Lawton, 90 N. Y. 293.

the rent accruing after the eviction until the end of the lease or the restoration of the tenant. The right of the landlord either to recover rent or to eject the tenant is suspended likewise.[29] However, eviction does not exempt the tenant from the payment of rent due at the time.[30] And this is true even where the rent is payable in advance and the eviction takes place before the expiration of the period covered by the payment.[31]

**Same — Evidence to Rebut Claim of Eviction — Former Tenant.**

A previous occupant of the premises is a proper witness for the landlord in vindication of the alleged nuisance on which the vacating tenant bases his claim of having been evicted.[32]

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29 Edgerton *v.* Page, *supra;* Hamilton *v.* Graybill, 48 N. Y. Supp. 1079; Heinrich *v.* Mack, 56 N. Y. Supp. 155.

30 Johnson *v.* Barg, 28 N. Y. Supp. 728.

31 Stein *v.* Rice, 51 N. Y. Supp. 320.

32 McLaughlin *v.* Boehm, 45 N. Y. Supp. 745.

# CHAPTER THREE.

## APARTMENT-HOLDER AND THIRD PERSONS.

### MUNICIPALITY.

**189. The Law's Interference for Morality in Tenements — Summary Proceedings.**

Everybody within the local limits of a municipality is subjected to its police powers and an apartment-holder is no exception, of course. While he is not the person looked to for carrying out its mandates so far as concerns the erecting and equipping the house so as best to subserve the well-being of its inmates and the community in general it must be understood readily that as a tenant he is expected to conduct himself and his business so as not to violate regulations made in the interest of such well-being. In New York the Code of Civil Procedure authorizes a summary ejectment of the tenant when the demised premises are used as "a bawdy-house or house of assignation for lewd persons, or any illegal trade or manufacture or other illegal business."[33] And a lessee who tolerates as a tenant a sublessee who has maintained such illegal occupancy has been held to forfeit his right to remain if the owner sees fit to avail himself of the statutory provision to recover the possession.[34]

**190. Tenement-House Act — Regulation in Interest of Morality — Prostitutes.**

By a similar doubly directed mandate and a corresponding liability by both the offender and the

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[33] See § 102, *supra*.

[34] Conforti *v.* Romano, 98 N. Y. Supp. 194.

householder who tolerates the offender as a tenant the Tenement-House Act aims to preserve such houses free from the presence of prostitution. The act provides that if such house or any part thereof is used for such a purpose, or that of assignation with immoral intent, with the permission of the lessee the lease of the latter shall determine at the election of the owner;[35] and that *permission*, within the meaning of the act, shall be imputed to such lessee unless he shall have begun summary proceedings to eject the offending sublessee within five days after service upon him of notice of the illegal use.[36] Permission by the owner subjects him to an enormous fine which may become a lien on the property, such permission being imputed as in the other case. Besides, the woman concerned shall be deemed a vagrant and committed to jail.[37]

**191. Same — Health — Safety — Cleanliness — Clear Fire-Escapes.**

The same act, after providing that the owner in the first place shall cleanse the house in all its parts and afterward keep it in a cleanly condition, proceeds specifically to prohibit acts on the part of any "person" to be done in "his apartment or upon his premises."[38] So also under the act "no person shall at any time

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35 Tenement-House Act of New York, § 143.

36 Tenement-House Act of New York, § 144.

37 Tenement-House Act of New York, § 141.

38 Tenement-House Act of New York, § 105. The penalty for encumbrance of a fire-escape, under the Tenement-House Act (§ 126), is ten dollars "which the nearest magistrate shall have jurisdiction to impose." "Any person" who, having been served with notice to remove a nuisance from the premises, does not comply within five days is, under the same section, liable to be brought before any court of civil procedure and fined $50. See also § 56, *supra*, in this volume.

place any incumbrance of any kind before or upon" a fire-escape.[39] And penalties for the violation of these several provisions, as well as for maintaining a nuisance upon the premises, are imposed upon not only "owners" but "persons," so mentioned in contradistinction of owners, thus indicating, of course, apartment-holders.[40] The making the offense both joint and several forces the proprietor to exercise a scrutiny over the inmates to see to their conforming to these requirements; the more so since it is possible for these penalties to become liens on the building.[41] The city charter provides that complaints of these violations may be made and filed in the tenement-house department by anybody who chooses to do so.[42]

**192. Same — Sanitation — Disposition of Garbage.**

While on the subject of the Tenement-House Act and its requirements looking to health attention might be given to that one having reference to the disposition of waste from the premises, such as garbage, ashes, etc. Among the acts specifically prohibited, as was said in the last paragraph, is the deposit of "filth" in any place "other than that provided for the same,"[43] and a later section is intended to be read, no doubt, in explanation of the last four words in so far as these peculiar descriptions of "filth" are concerned. The words of the section indicated are as follows: "The owner of every tenement-house shall provide for said building proper and suitable conveniences

39 Tenement-House Act of New York, § 126.
40 Tenement-House Act of New York, § 126.
41 Tenement-House Act of New York, § 126.
42 Charter of Greater New York, § 1338.
43 Tenement-House Act of New York, § 106.

or receptacles for ashes, rubbish, garbage, refuse, and other matter."[44] Violation of these rules would come within the penalties mentioned above, of course; besides the Sanitary Code makes liable jointly and severally "every owner, lessee, tenant and occupant of any building or of any part thereof where there shall be a nuisance," and each may be made to abate the nuisance in respect of the premises or the part thereof occupied by him.[45]

### HOLDER OF NEAR-BY APARTMENT.

**193. Private Nuisance — Neighboring Houses — Nature and Remedies.**

The place a man occupies as a residence he may use as he pleases, so long as the use does not render a neighboring place, occupied as a residence by another, unfit for such a purpose. The maxim, "*sic utere tuo ut alienum non lædas,*" is the substance of the law of private nuisance: so manage your own concerns that you may not annoy somebody else.[46] When a proprietor of a building lets it in different parts to different persons each of these persons is entitled, as against the others, to live free from any discomforts within their power to spare him in their manner of occupying their particular premises.[47] If one has this right it follows that these others have the duty so to spare

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44 Tenement-House Act of New York, § 109.

45 Sanitary Code of New York, § 13.

46 An elaborate exposition of the law on the subject is to be found in Rodenhausen *v.* Craven, 141 Pa. St. 546, 21 Atl. 774. An actionable nuisance may be said to be anything wrongfully done or permitted which injures or annoys another in the enjoyment of his legal rights. Cooley on Torts, § 565.

47 Quigley *v.* Manufacturing Co., 50 N. Y. Supp. 98.

him.[48] The right and the duty are reciprocal. On the theory just set forth a court has restrained by injunction the incessant strumming on a piano, whereby the occupants of one house were amusing themselves, indifferent to the comfort of people in neighboring houses who were deprived of sleep on account of it.[49]

### 194. Same — Nuisance in Apartment-Houses — On Whom Responsibility Rests.

It stands to reason, what vexation a person in one house could by his acts inflict upon a person in another house would be very much magnified if these persons, instead of living in different houses, lived in different apartments within the one house. And so it has been suggested that in the case of annoyance, suffered by persons living on one floor, proceeding from children living on another floor the tenants aggrieved might have redress by action against the occupant responsible for the offending children.[50] In the case in mind an action had been instituted against the proprietor of a building, but erroneously, of course, since by letting the apartment he had divested himself of dominion over it. To hold a landlord responsible for a nuisance suffered by one tenant at the hands of another it would have to be shown affirmatively that he let the premises with full knowledge of the tenant's wrongful intention in securing them.[51]

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48 An actionable nuisance may be said to be anything wrongfully done or permitted which injures or annoys another in the enjoyment of his legal rights. Cooley on Torts, § 565.

49 Feeney *v.* Bartoldo (N. J. Eq.), 30 Atl. 1101. See also Thompson *v.* Benrmann, 37 N. J. Eq. 345. In the latter case the cause of complaint was a shooting gallery.

50 Seaboard Realty Co. *v.* Fuller, 67 N. Y. Supp. 146.

51 See § 149, *ante*.

### 195. Same — Noises — Odors — Unpleasant Repute.

As for the suggestion above in regard to the noise of children, probably no court would go so far as to adopt it unless the case was a particularly outrageous one.[52] In a case in Indiana one tenant had another enjoined from managing his cooking on the premises in such a manner as to offend the nostrils of the former and those who were entitled to visit him on business.[53] And where a pawnbroker had placed his sign on the building and the owner fancied a grievance on the ground of injury to the house, by reason of the character of the business indicated the court held no action to accrue to him but intimated that one might to other holders of apartments in the house.[54] A tenant of one part of a building may have a tenant of another part restrained by injunction from using a machine in such a way as to be an annoyance, when, by a simple change of position without actual removal, the machine may be operated and give offense to nobody.[55]

### 196. Same — Water Leakage — Enjoyment of Common Utilities.

When tenants live one above the other it needs no contract between them to make each owe the other a duty, to the end that the latter suffer no injury by reason of the former's occupancy.[56] So, when a per-

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52 "A father is never liable for the wrongful acts of his minor son unless the acts are committed *with the father's consent* or in connection with the father's business." Smith *v.* Davenport, 45 Kans. 423. The difficulties would lie in determining whom to sue and how to prove consent, etc.

53 Shroyer *v.* Campbell, 31 Ind. App. 83, 67 N. E. 193.

54 See § 17, *supra.*

55 Pach *v.* Geoffrey, 22 N. Y. Supp. 275.

56 Slate *v.* Adler, 28 N. Y. Supp. 729, cites Moore *v.* Goedel, 34 N. Y. 532; Eakin *v.* Brown, 1 E. D. Smith, 36; Totten *v.* Phipps, 52 N. Y. 356.

son occupied premises under those of another and in the scrubbing of the floors of the upper tenement water leaked down upon the property of the lower tenant it gave the latter a right of action.[57] The neglect of a basement tenant of the duty undertaken by him under agreement with the tenant overhead to turn off the water at night made him liable in damages to the other for injury to the property of the latter caused by the overflow of a water-closet used in common by the two parties.[58] The obstruction by one tenant of the common staircase gave a right of action to another tenant who, thus deprived of that means of escape in case of fire, was forced to leap from a window whereby injury was received.[59]

197. Same — Duty of One Tenant to Another — Repairs.

It has been said that the duty of repairs depends upon the right of possession:[60] reversing the remark, it might be said that the right of possession imposes the duty upon him to whom that right accrues, and this concerns not alone the question whether the landlord or the tenant shall repair. It is a general principle of law that when separate premises in the one building are held by separate tenants, and one tenant is injured through failure of the other to repair his own premises the latter is responsible in damages.[61]

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57 Patton *v.* McCant, 29 So. Car. 597.

58 Moore *v.* Goedel, 34 N. Y. 532.

59 Cohn *v.* May, 210 Pa. St. 615, 60 Atl. 301.

60 See § 136, *ante.*

61 Stove Co. *v.* Wheeler, 14 Ill. App. 112, citing Gridley *v.* City of Bloomington, 68 Ill. 47.

**Same — Where Landlord Has Agreed to Keep in Repair.**

If a tenant receives injury through a defect in a neighboring tenant's premises which, by virtue of his lease, the landlord is under obligation to repair his action still would be against the other tenant, because there would be no privity of contract between them whereby the landlord owed him a duty;[62] besides, a contract would not give him a right of action in tort any way.[63] But the law makes it the duty of the tenant to repair, and he may charge the expense to the landlord.[64]

**198. Same — Continuing Nuisance — Liability — Landlord — Tenant.**

If the defect was a nuisance antedating the lease the landlord would be responsible, of course.[65] It hardly needs to be said that the tenant's duty to repair does not go to the extent of his putting the premises into a better condition than that in which he found them.[66] One who is liable for a continuing nuisance cannot escape liability, either, by taking a contract from another to remedy the nuisance by repairs. The tenant cannot, by reason either of his occupancy or his contract to repair, be interposed between the person injured and the landlord.[67] And yet in a case where

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62 Brady *v.* Klein, 133 Mich. 422; Sterger *v.* Van Siclen, 132 N. Y. 499.

63 See § 83, *supra.*

64 See § 169, *supra.*

65 See § 133, *supra.*

66 See § 169, *supra*, note. See also 1 Woodfall's Landlord and Tenant, 367. The covenant is to be construed as having reference to the condition of the premises at the time when the covenant began to operate. Walker *v.* Hatton, 1 M. & W. 258.

67 Ingwersen *v.* Rankin, 47 N. J. Law, 18. And see Clancy *v.* Byrne, 56 N. Y. 129.

the landlord had given the tenant money to defray the expense of certain repairs, money amply sufficient for the purpose, and the tenant had thereafter done nothing in the expected direction it was held that the landlord was not responsible for injuries to a guest of the tenant's caused by the unremedied defects.[68] It would have been the same if the landlord had been held, for then he could have recovered, by way of indemnity, from the tenant after paying the damages.

## ALL PERSONS.

### 199. Trespass — Trespass Quare Clausum Fregit — Liability.

A nuisance such as we have been considering is, like an assault, an unwarrantable encroachment by one person upon another,[69] and so comes under the legal definition of a trespass.[70] So also does the unwarrantable entry of one person upon the premises of another.[71] The latter is, however, of a distinct kind and is called a trespass *by breaking the close* or, to use the usual Latin equivalent, *quare clausum fregit*.[72] It is a general and wholesome rule of law whenever, by an act which he could have avoided, and which cannot be jus-

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68 Sterger *v.* Van Sicien, 7 N. Y. Supp. 805, 55 Hun, 605.

69 See § 188, *supra*.

70 Trespass in its largest and most extensive sense signifies every transgression or offense against the law of nature, of society, or of the country in which we live, whether it relates to a man's person or his property. Blackstone's Comm., Bk. III, 208.

71 But in the limited and confined sense * * * it signifies no more than an entry on another man's ground without lawful authority or doing some damage, however inconsiderable, to his real property. Blackstone's Comm., Bk. III, 208. Every unwarrantable entry upon a peaceable possession is a trespass. Palmer *v.* Aldridge, 16 Barb. 131.

72 Blackstone's Comm., Bk. III, *supra*.

tified in law, a person inflicts an immediate injury by force he is legally answerable in damages to the person injured.[73] This does not mean merely injured in body in the sense of a physical wounding[74] but, more comprehensively, injured in the respect of being made to feel that one's rights have been outraged through an intrusion upon person or property.[75] One must have the possession in order to sue for a trespass;[76] but the defendant may not attack the title of one in possession.[77]

**200. Same — Action for Trespass — Nominal Damages.**

Such an intrusion, there having been no invitation express or implied, makes the intruder liable in damages, however light they may be, even where the bare act has not been accompanied by violence of any kind or resulted in substantial injury.[78] In other words, the sole fact of the trespass entitles the holder of the premises to what are called *nominal damages,* at

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73 Goldsmith *v.* Joy, 61 Vt. 488.

74 For the purpose of maintaining an action for a trespass it is immaterial whether there be any actual damage or not. Every invasion of private property, be it ever so slight, is a trespass. Entick *v.* Carrington, 56 Conn. 320.

75 "By the laws of England every invasion of private property, be it ever so minute, is a trespass. No man can set his foot on my ground without my license but he is liable to an action, though the damage be nothing. Entick *v.* Carrington, 19 St. Tr. 1066. And see Pollock on Torts (Webb's ed.), 10.

76 Mather *v.* Ministers, etc., 3 S. & R. 509. Before entry a lessee cannot maintain trespass. Rogers *v.* Grazebrook, 8 Ad. & El. 895.

77 The trespasser cannot claim successfully in his defense that the person in possession was not entitled to the latter, for against a wrongdoer any possession is good. Pollock on Torts (Webb's ed.), 450, 451.

78 An entry into the building of another without license express or implied is a trespass and entitles the owner to nominal damages. Brown *v.* Perkins, 83 Mass. 89. And see note 27, *supra.*

least.[79] Where the bare act is aggravated something more than nominal damages are due; and necessarily the greater the aggravation the larger the damages.[80]

**Same — Intrusion by Officer of the Law — What He May Do.**

Blackstone says that a sheriff may not break open any outer door in order to execute either a *fieri facias* or a *capias ad faciendum,* but he must enter peacefully; this being accomplished he may then, after a request and a refusal, break open any inner doors belonging to the defendant so as to take the goods.[81] This is true still here as well as in England, and not with respect only to the levying upon goods but also to the serving of all kinds of legal process.[82]

**201. Same — Application of the Rule to Premises Held in an Apartment-House.**

An officer having entered peacefully the outer door of an apartment-house may not break from the common hall into the apartment of any of the occupants in order to attach property of a third person.[83] And it also might be said that he may not do so in order

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79 Nominal damages: "A trifling sum awarded to a plaintiff in an action where there is no substantial loss or injury to be compensated, but still the law recognizes a technical invasion of the defendant's duty." Black's Law Dictionary. Maule, J., in Beaumont *v.* Greathead (2 C. B. 499), refers to nominal damages as "a mere peg on which to hang costs."

80 Hatch *v.* Pendergast, 15 Md. 251.

81 Kelley *v.* Schuyler, R. I.

82 Snydacker *v.* Brosse, 51 Ill. 357. But this has no reference to the service of a warrant in criminal proceedings. See Bishop's Crim. Proc. 195.

83 Swain *v.* Mizner, 74 Mass. 182.

to arrest a third person on mere suspicion.[84] And his final wrongdoing makes him a trespasser from the beginning.[85]

**Same — What Is Invitation.**

It has been held that any entering upon the property of another or into his house at usual and reasonable hours and in a customary manner for any of the common purposes of life cannot be regarded as a trespass.[86] This is true, of course, because the intention governs; but even where the intention at the time of entering has been of the best, if the person after gaining admission conducts himself improperly while on the premises the law regards him as a trespasser *ab initio*.[87] The fact that one is the owner of personal effects that are on the premises of another temporarily does not avail him by way of an invitation or a license to enter in order to take them away.[88]

**202. Same — Entrance for One Purpose Is Entrance for All.**

The plaintiff had hired a piano under a contract which stipulated among other things that, in case of default in payment of any instalment of the price agreed upon, the plaintiff would surrender the instru-

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84 The officer cannot break inner doors of the house of a stranger, on suspicion that the person wanted is there, to arrest the latter on mesne process. Johnson *v.* Leigh, 6 Taunt. 246.

85 And if the officer exceeds the valid extent of his authority after effecting his entrance validly he becomes a trespasser from the beginning. Dehm *v.* Hinman, 56 Conn. 320.

86 Lakin *v.* Ames, 10 Cush. 198.

87 Six Carpenters' Case, 8 Coke R. 146; Smith *v.* Rose, 110 Mass. 110; Adams *v.* Freeman, 12 Johns. 408.

88 Smith *v.* Rose, *supra*.

ment to the defendants or their agent within five days of the default, "or permit their agent to enter in or upon any premises where said piano may be and without let or hindrance take away the same." After a default in the payment of an instalment the dealers one day gained entrance to the premises by stating falsely that they wished to tune the instrument, but being once in they took possession of the piano and carried it away without plaintiff's consent. The court held them justified since the contract gave them the right to enter. The deceit did not affect the right.[89]

**203. Same — Act Valid Otherwise Made Trespass Through Summary Method.**

Even where there might be valid reasons for tearing down a house, yet it would be an actionable trespass to do so while the occupants were in it and without giving the latter due notice beforehand.[90]

**Same — Imposition of Hands — Assault and Battery.**

A milkman whom the tenant had allowed daily to enter his apartments, situated on the second floor of a tenement, for the purpose of leaving milk in the kitchen was instructed to discontinue a habit he had formed of penetrating to the occupant's sleeping-room in order to present his bill as that person lay in bed. Disregarding the instruction he followed the old habit and, the occupant being in bed sick with headache and in a deep sleep, shook him. It was held that this was

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[89] North *v.* Williams, 120 Pa. St. 109. But fraud exercised in the effort to obtain an entrance may be in its effect equivalent to force. Kimball *v.* Custer, 73 Ill. 389.

[90] Perry *v.* Fitzhowe, 8 Ad. & El. 757. But see § 50, *supra.*

no trespass to property but it was assault and battery.[91]

**204. Same — Trespass Through Misuse of Place Which Otherwise One Has Right To.**

By standing on a sidewalk in front of the premises of another in order to abuse the latter by language and menaces, etc., a man puts the sidewalk to a purpose it was not designed for and becomes a trespasser.[92] So does one who on his own premises places what obstructs another tenant's window.[93]

**Same — Eavesdropping.**

By the criminal laws of New York it is a misdemeanor for a person to loiter secretly about a building with intent to overhear discourse therein and to repeat and publish the same to vex or injure others.[94]

**Same — Abetting Trespass — Acts Amounting to Such.**

Any person present at the commission of a trespass, encouraging it by words, gestures, looks, or signs, or who in any manner or by any means countenances or approves the same is in law deemed an aider and abettor, and liable with the principal.[95]

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91 Richmond *v.* Fiske, 160 Mass. 34.

92 Adams *v.* Rivers, 11 Barb. 390.

93 If one tenant after a demise to another of premises in the same house sets up an interruption to the view of the latter's window, he is a trespasser and may be dealt with as such. Whitehouse *v.* Aiken (Mass.), 77 N. E. 499.

94 N. Y. Penal Code (1881), § 436. And see State *v.* Pennington, 3 Head, 299. See also State *v.* Williams, 2 Overt. 108; Com. *v.* Lovett, 6 Pa. L. J. 226. It seems that peeping is not an indictable offense. Com. *v.* Mengelt, cited in Com. *v.* Lovett.

95 Brown *v.* Perkins, 83 Mass. 89.

**205. Same — Mild Force in Resistance — No Assault.**

In a fierce contention between two persons living on adjoining premises one of them, plaintiff, put her arm across the barrier dividing the properties whereupon, as she alleged, the defendant struck the arm with his fist. The court held that the intrusion of the arm was a trespass and that the owner of the soil had the right to remove it, being mindful meanwhile of the rule, "*molliter manus imposuit.*"[96]

**Same — Injury to Trespasser — What Creates Responsibility for Occupant.**

In order that a trespasser may recover from the occupant damages for any injury received by him while on the premises he must show something more than negligence. It must appear that the occupant inflicted the injury upon him wantonly and intentionally.[97] In this connection it may be said that a child of tender years may become a trespasser.[98]

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[96] Hannabalson *v.* Sessions, 116 Iowa, 457.

[97] Gillespie *v.* McGowan, 100 Pa. St. 144.

[98] Gillespie *v.* McGowan, *supra*. Cooley, J.: "It is the duty of parents to take care of their children and to see that they do not commit trespass — and if they do not do that but suffer the children to wander away upon other people's property the children go there at their own risk, and the negligence is contributory on the part of the parents in allowing them to wander where they have no right. And this negligence of the parents is, for the purposes of legal remedy, imputable to the children themselves." Powers *v.* Harlow, 53 Mich. 507.

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# APPENDIX I.

## THE TENEMENT-HOUSE ACT OF THE STATE OF NEW YORK.

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### GENERAL PROVISIONS.

# APPENDIX I.

## THE TENEMENT-HOUSE ACT OF THE STATE OF NEW YORK.

**Chapters 334 and 555, Laws of 1901; Chapter 352, Laws of 1902; Chapter 179, Laws of 1903; Chapter 346, Laws of 1904; Chapter 507, Laws of 1905; Chapter 148, Laws of 1906; Chapters 622, 631, and 681, Laws of 1907.**

### CHAPTER I.

DEFINITIONS.

**Short Title and Application.**

SECTION 1. This act may be cited as the Tenement House Act, and its provisions shall apply to cities of the first class.

**Definitions.**

§ 2. Certain words used in this act are defined for the purposes thereof as follows:

(1) A tenement house is any house or building, or portion thereof, which is rented, leased, let or hired out, to be occupied, or is occupied as the home or residence of three families or more living independently of each other, and doing their cooking upon the premises, or by more than two families upon any floor, so living and cooking, but having a common right in the halls, stairways, yards, water-closets or privies, or some of them.

(2) A yard is an open unoccupied space on the same lot with a tenement house, between the extreme rear line of the house and the rear line of the lot.

(3) A court is an open unoccupied space, other than a yard, on the same lot with a tenement house. A court not extending to the street or yard is an inner court. A court extending to the street or yard is an outer court. If it extends to the street it is a street court. If it extends to the yard it is a yard court.

(4) A shaft includes exterior and interior shafts, whether

for air, light, elevator, dumbwaiter, or any other purpose. A vent shaft is one used solely to ventilate or light a water-closet compartment or bathroom.

(5) A public hall is a hall, corridor or passageway not within an apartment.

(6) A stair hall includes the stairs, stair landings and those portions of the public halls through which it is necessary to pass in going between the entrance floor and the roof.

(7) A basement is a story partly but not more than one-half below the level of the curb.

(8) A cellar is a story more than one-half below the level of the curb.

(9) A fireproof tenement house is one the walls of which are constructed of brick, stone, iron or other hard incombustible material, and in which there are no wood beams or lintels, and in which the floors, roofs, stair halls and public halls are built entirely of brick, stone, iron or other hard incombustible material, and in which no woodwork or other inflammable material is used in any of the partitions, furrings or ceilings. But this definition shall not be construed as prohibiting, elsewhere than in the stair halls or entrance halls, the use of wooden flooring on top of the fireproof floors or the use of wooden sleepers, nor as prohibiting wooden handrails and hard wood treads such as described in section eighteen of this act.

(10) The word shall is always mandatory, and not directory, and denotes that the house shall be maintained in all respects according to the mandate, as long as it continues to be a tenement house.

(11) Wherever the words charter, ordinances, regulations, department of buildings, department of health, department of water supply, fire department, department charged with the enforcement of this act, corporation counsel, city treasury or fire limits occur in this act they shall be construed as if followed by the words "of the city in which the tenement house is situated." Wherever the words "is occupied" are used in this act applying to any building, such words shall be construed as if followed by the words "or is intended, arranged or designed to be occupied."

(12) The height of a tenement house is the perpendicular distance measured in a straight line from the curb level to the highest point of the roof beams, the measurement in all cases to be taken through the center of the facade of the house. Where a building is on a corner lot and there is more than one grade or level, the measurements shall be taken through the center of the facade on the street having the greatest grade.

**Buildings Converted or Altered.**

§ 3. A building not erected for use as a tenement house, if hereafter converted or altered to such use, shall thereupon become subject to all the provisions of this act affecting tenement houses hereafter erected.

**Buildings in Process of Erection; Excavations Before June 1, 1901; First Tier Beams Before August 1, 1901; Plans Filed Before April 10, 1901.**

§ 4. A tenement house not now completed, but the excavation for which shall have been commenced in good faith on or before the first day of June, nineteen hundred and one, after approval of the plans therefor by the department of buildings, and the first tier of beams of which shall have been set on or before the first day of August, nineteen hundred and one, shall be subject only to the provisions of this act affecting now existing tenement houses; provided that the plans for said house were filed in said department on or before the tenth day of April, nineteen hundred and one, and were in accordance with the laws in force at the time of filing, and that the building is built in accordance with such laws.

**Alteration and Change in Occupancy; Power to Cause Building to Be Vacated for Violation.**

§ 5. No tenement house shall at any time be altered so as to be in violation of any provision of this act. If any tenement house or any part thereof is occupied by more families than provided in this act, or is erected, altered or occupied contrary to law, such tenement house shall be deemed an unlawful structure, and the department charged with the enforcement of this act may cause such building to be vacated. And such building shall not again be occupied until it or its occupation, as the case may be, has been made to conform to the law.

§ 6. A studio building erected after May first, nineteen hundred and one, and prior to October first, nineteen hundred and five, in a city of the first class upon a lot not less than seventy-five feet in width by one hundred feet in depth, which building contains not less than fourteen studios, each with a window not less than ten feet in height and ten feet in width, such studio building being occupied and used by three families or more, living independently of each other and doing their cooking on the premises, shall be and hereby is declared exempt from the requirements and provisions of sections fifty-two, seventy, seventy-two, seventy-three, seventy-four, eighty, eighty-five, ninety-one, ninety-five, ninety-seven, one hundred and twenty-one and one hundred and twenty-two of this act.

## CHAPTER II.

### PROTECTION FROM FIRE.

#### TITLE I.

**Fireproof tenement, when required.**

§ 11. Every tenement house hereafter erected exceeding six stories or parts of stories in height above the curb level, shall be a fireproof tenement house, nor shall any tenement house be altered so as to exceed such height without being made a fireproof tenement house. A cellar the ceiling of which does not extend more than two feet above the curb level is not a story within the meaning of this section. Where, however, a tenement house hereafter erected is located on a street of which the grade is more than four feet in one hundred feet, a cellar or basement, the ceiling of which does not extend more than six inches above the highest point of the curb level, is not to be deemed a story within the meaning of this section, provided, however, that no part of such cellar or basement is occupied or arranged to be occupied for living purposes except by the janitor of such building and his family, and provided also that such cellar or basement is the lowest story of such building.

**Fire Escapes, What Houses Excepted from Effect of This Section.**

§ 12. Every non-fireproof tenement house hereafter erected, unless provided with fireproof outside stairways directly accessible to each apartment, shall have fire escapes located and constructed as in this section required, except that tenement houses that are less than four stories in height and which also do not contain accommodations for more than four families in all, may be equipped with such other iron, steel or wire cable fire escapes as may be approved by the department charged with the enforcement of this act; such escapes must be capable of sustaining two thousand pounds, and be of sufficient length to reach from the top floor to the ground, and with rungs not more than twelve inches apart and not less than fifteen inches in length.

**One from Each Apartment, None from Bathroom, Water Closet or Stair Hall Window; Projection Limited to Four Feet.**

Subdivision 1. The fire escapes shall open directly from at least one room in each apartment at each story above the ground

floor, other than a bathroom or water closet compartment, and shall not include the window of a stair hall, and no fire escape shall be placed in a court except as provided in section fifty-seven of this act. Fire escapes may project into the public highway to a distance not greater than four feet beyond the building line.

**Several Constructions of Balcony Escapes and Goose-neck Ladders.**

Subdiv. 2. The fire escapes shall consist of outside open iron balconies and stairways. The balcony on the top floor, except in case of a front fire escape, shall be provided with a goose-neck ladder leading from said balcony to and above the roof. Such goose-neck ladder shall be securely fastened to the wall of the building and to the roof, and there shall be a space of not less than eighteen inches between the outside line of such ladder and the outer rail of the top fire-escape balcony. Such ladder shall be constructed as provided for drop ladders in subdivision eight of this section; the strings shall be in one piece and shall not be connected in parts by rivets and bolts; such ladders shall be arranged to rest at the bottom on brackets, and not on the slats forming the floor of the balcony.

**Balconies, Width, Length, Passageway, Size of Stairway.**

Subdiv. 3. The balconies shall not be less than three feet in width, taking in at least one window of each apartment at each story above the ground floor. They shall be below and not more than one foot below the window sills and extend in front of and not less than nine inches beyond each window. There shall be a landing not less than twenty-four inches square at the head and foot of each stairway. In every case there shall be a passageway between the string of the stairway and the wall of the building or the outer rail of the balcony, as the case may be, such passageway to be not less than fourteen inches wide in every part. The stairway opening on each platform shall be of a size sufficient to provide clear headway.

**Floors of Balconies, Material, Fastening, Size of Stair Opening, Sustaining Power.**

Subdiv. 4. The floors of balconies shall be of wrought iron or steel slats not less than one and a half inches by three-eighths of an inch, placed not more than one and one-quarter inches apart, and well secured and riveted to iron battens one and a half

inches by three-eights of an inch, not over three feet apart and riveted at the intersection. The ends of such floor slats shall project beyond the platform frame, but shall not rest on the bottom rail. The openings for stairways in all balconies shall not be less than twenty-one inches wide and thirty-two inches long, and such openings shall have no covers of any kind. The platforms or balconies shall be constructed and erected to safely sustain in all their parts a safe load at a ratio of four to one, of not less than eighty pounds per square foot of surface.

**Railings, Fastening, Material, Brackets.**

Subdiv. 5. The outside top rail shall extend around the entire length of the platform and in all cases shall go through the wall at each end, and be properly secured by nuts and four-inch square washers at least three-eighths of an inch thick, and no top rail shall be connected at angles by cast iron. The top rail of balconies shall be one and three-quarter inches by one-half inch of wrought iron, or one and a half inch angle iron one-quarter inch thick. The bottom rails shall be one and one-half inches by three-eighths of an inch wrought iron, or one and a half inch angle iron, one-quarter inch thick, well leaded or cemented into the wall. The ends of all rails which go through the walls shall be worked out to not less than three-quarter inch bolt size for top rails, or one-half inch bolt size for bottom rails, and if constructed as separate pieces shall be properly secured to the rails with not less than two one-half inch rivets. The standards or filling-in bars shall be not less than one-half an inch round or square wrought iron, well riveted to the top and bottom rails and platform frame. Such standards or filling-in bars shall be securely braced by outside brackets at suitable intervals, and shall be placed not more than six inches from centers; the height of railings shall in no case be less than two feet nine inches.

**Stairways, Angle, Construction, Sustaining Power.**

Subdiv. 6. The stairways shall be placed at an angle of not more than sixty degrees, with steps not less than six inches in width and twenty inches in length, and with a rise of no more than nine inches; and shall be constructed and erected to fully sustain in all their parts a safe load at a ratio of four to one of not less than one hundred pounds per step, with the exception of the tread, which must safely sustain at said ratio a load of two hundred pounds. The treads shall be flat open treads

or may be constructed of flat bars, not over one and one-half inches wide, riveted to angle irons of a size not less than one and one-half inch, with the open spaces between such bars not over three quarters of an inch wide. The strings shall be not less than three-inch channels of iron or steel, or three-eighths by four-inch bars, or two three-eighths by one and one-half inch bars properly latticed, or two one-quarter by one and one-half inch angles properly latticed, or other shape equally strong. Unless of channel or angle iron they shall be stiffened by the use of braces properly leaded into or bolted through the wall, and also bolted through the string at a height of not less than seven feet above the floor of the balcony. They shall rest upon and be bolted to a bracket, which shall be fastened through the wall as hereinafter provided. The strings shall be securely bolted to a bracket at the top, and the steps in all cases shall be double riveted or bolted to the strings. The stairs shall have three-quarter inch handrails of wrought iron, well braced.

**Brackets, Size, Material, To Go Through Wall, To Be Set as Walls Are Built.**

Subdiv. 7. The brackets shall not be less than one-half inch by one and three-quarter inches wrought iron, placed edgewise, or one and three-quarter inch angle iron, one-quarter inch thick, well braced; they shall not be more than four feet apart, and shall be braced by means of not less than three-quarters of an inch square wrought iron, and shall extend two-thirds of the width of the respective balconies or brackets. The brackets shall go through the wall and be turned down three inches, or be properly secured by nuts and four-inch square washers at least three-eighths of an inch thick. On new buildings the brackets shall be set as the walls are being built. When buckets are put on tenement houses already erected, the part going through the wall shall not be less than one inch in diameter, with screw nuts and washers not less than five inches square and one-half inch thick. If the end going through the wall is separately constructed it shall be properly connected to the bracket with not less than two five-eighths inch rivets staggered.

**Drop Ladders, Length, Width, Construction.**

Subdiv. 8. A drop ladder shall be required from the lowest balcony. Such drop ladder shall be of sufficient length to reach from the lowest balcony or platform to a safe landing place beneath. It shall be not less than fifteen inches in width, with strings not less than one-half inch by two inches and

rungs not less than five-eighths of an inch in diameter placed not over twelve inches apart and properly riveted through the strings. Where the lowest balcony is more than fourteen feet above the ground beneath the same, a suitable landing platform shall be provided. Such platform shall be located not more than ten feet above the ground and shall be connected with the fire escapes above by a stairway constructed as in this section required. Such platform shall be not less than four feet in length by three feet in width, and shall be provided at each end with proper railings and a drop ladder to reach the ground. Except as above specified, it shall be constructed in conformity with the other provisions of this section.

**Painting, Two Coats, Plate Warning Against Encumbrances.**

Subdiv. 9. All the parts of such fire escapes shall receive not less than two coats of paint, one in the shop and one after erection. All fire escape balconies shall contain a plate firmly fastened to the standards or filling-in bars near the top railing in front of and facing at least one window in each apartment using such balcony, such plate to contain in plain, large, prominent, raised letters, each letter to be not less than one-half an inch in length, the following words: "Any one placing any encumbrance on this balcony will be fined ten dollars." The lettering on such plates shall be painted with a paint of a color different from that used on the body of the plate so that the letters will be prominent and distinct.

**Fire Escapes on Wooden Tenement Houses, Stairs, Brackets, Fastening.**

Subdiv. 10. All fire escapes hereafter constructed on wooden tenement houses shall conform in all particulars to the provisions of section twelve of this act except as hereinafter mentioned: The rise of the steps of the stairways shall be not more than eleven inches; the strings shall be not less than one-quarter inch by four inch bars properly braced to the wall as described in subdivision six of this section; the brackets and top rails shall be secured by bolts through the wall. In no case shall said bolts pass through the studs of said wall, but shall be properly fastened with washers and screw nuts through a wrought iron or steel plate, such plate to be not less than three inches by one-quarter inch, and to pass across and bear upon the entire inner faces of at least two studs. The said plate shall be backed and re-enforced by solid blocking as thick as the studding, firmly

secured to the studs across which the plate passes. The bottom rails shall be secured in a similar manner, or by means of lag screws not less than five-eighths of an inch in diameter and four inches long, properly screwed into bored holes in the studs, said holes to be not more than seven-sixteenths of an inch in diameter and the center of such holes not to be within one and one-quarter inches of the sides of the studs.

**Bulkheads, Fireproof, Exception.**

§ 13. Every tenement house hereafter erected shall have in the roof a fireproof bulkhead with a fireproof door to the same, and shall have fireproof stairs with a guide or handrail leading to the roof, except that in tenement houses hereafter erected, which do not exceed four stories and cellar in height, and which also are not occupied or arranged to be occupied by more than two families on any floor, such bulkheads may be of wood covered with metal on both sides. The stairs leading to such bulkheads shall be constructed as specified in sections fourteen to twenty of this act.

**Stairs and Public Halls, Width, At Least One Flight.**

§ 14. Every tenement house hereafter erected shall have at least one flight of stairs extending from the entrance floor to the roof, and the stairs and public halls therein shall each be at least three feet wide in the clear.

**Stairways in Non-fireproof Buildings, Number and Width, Where House Contains Over Twenty-six Apartments.**

§ 15. Every non-fireproof tenement house hereafter erected containing over twenty-six apartments or suites of rooms above the entrance story shall also have an additional flight of stairs for every additional twenty-six apartments or fraction thereof; if said house contains not more than thirty-six apartments above the entrance story, in lieu of an additional stairway, the stairs, stair halls and entrance halls throughout the entire building may each be at least one-half wider than is specified in sections fourteen and twenty of this act.

**Stairways in Fireproof Buildings, Number and Width, When House Contains Over Thirty-six Apartments.**

§ 16. Every fireproof tenement house hereafter erected containing over thirty-six apartments or suites of rooms above the entrance story shall also have an additional flight of stairs for every additional thirty-six apartments or fraction thereof; but

if said house contains not more than forty-eight apartments above the entrance story, in lieu of an additional stairway the stairs, stair halls and entrance halls throughout the entire building may each be at least one-half wider than is specified in sections fourteen and twenty of this act. And if said house contains not more than eighty-four apartments above the entrance story in lieu of three stairways there may be but two stairways, provided that one of such stairways and the stair halls and entrance halls connected therewith are at least one-half wider than is specified in sections fourteen and twenty of this act.

**Stairways, Continued, Rise, Treads, Winders Only When Elevator is Provided.**

§ 17. Each flight of stairs mentioned in the last three sections shall have an entrance on the entrance floor from the street or street court, or from an inner court which connects directly with the street. All stairs shall be constructed with a rise of not more than eight inches and with treads not less than ten inches wide and not less than three feet long in the clear. Winders will not be permitted except in a tenement house provided with a power passenger elevator. Where winders are used, all treads at a point eighteen inches from the strings on the wall side shall be at least ten inches wide.

**Stair Halls, When Fireproof Construction, Floors, Modification in Certain Houses.**

§ 18. The stair halls in all non-fireproof as well as fireproof tenement houses hereafter erected shall be constructed as in this section and the two following sections specified. In tenement houses hereafter erected which either are occupied or are arranged to be occupied by more than two families on any floor, or which exceed four stories and cellar in height, the stair halls shall be constructed of fireproof material throughout. The risers, strings and banisters shall be of metal or stone. The treads shall be of metal, slate or stone, or of hard wood not less than two inches thick. Wooden hand rails to stairs will be permitted if constructed of hard wood. The floors of all such stair halls shall be constructed of iron or steel beams and fireproof filling and no wooden flooring or sleepers shall be permitted. In tenement houses hereafter erected which do not exceed four stories and cellar in height and which also are not occupied or arranged to be occupied by more than two families on any floor, the stair halls shall either be constructed of iron

beams and fireproof filling, or shall be filled in between the floor beams with at least five inches of cement deafening. In such houses the stairs shall be iron or stone, or may be of wood, provided the soffits are covered with metal lath and plastered with two coats of mortar, or with good quality plaster boards not less than one-half inch in thickness, made of plaster and strong fiber and all joints made true and well pointed.

**Stair Halls, Continued, Inclosure, Doors, No Transoms, Modification in Certain Houses.**

§ 19. In every non-fireproof tenement house hereafter erected which either is occupied or is arranged to be occupied by more than two families on any floor, or which exceeds four stories and cellar in height, all stair halls shall be inclosed on all sides with brick walls. The doors opening from such stair halls shall be fireproof and self-closing, and if provided with glass such glass shall be good quality wire-glass. There shall be no transom or movable sash opening from such stair hall to any other part of the house. Each stair hall shall be shut off from all non-fireproof portions of the public halls and from all other non-fireproof parts of the building, on each story, by self-closing fireproof doors, and if glass is used in such doors it shall be of good quality wire-glass. In tenement houses hereafter erected which do not exceed four stories and cellar in height and which also are not occupied or arranged to be occupied by more than two families on any floor, the stair halls shall be inclosed on all sides with brick walls or with partitions of angle iron and fireproof blocks not less than four inches thick; in tenement houses hereafter erected which do not exceed three stories and cellar in height, and which also are not occupied or arranged to be occupied by more than two families on any floor, the stair halls may be enclosed with wooden stud partitions, provided such partitions are covered on both sides with metal lath, or with good quality plaster boards not less than one-half inch in thickness, made of plaster and strong fiber and all joints made true and well-pointed, and provided that the space between the studs is filled in with brick to the height of the floor beams.

**Entrance Halls, Width, Construction, Access.**

§ 20. Every entrance hall in a tenement house hereafter erected shall be at least three feet six inches wide in the clear, from the entrance up to and including the stair enclosure, and beyond this point at least three feet wide in the clear, and shall

comply with all the conditions of the preceding sections of this act as to the construction of stair halls, except that in a fireproof tenement house hereafter erected it may be enclosed with terra cotta blocks not less than four inches thick and angle iron construction, instead of brick walls. If such entrance hall is the only entrance to more than one flight of stairs, that portion of said hall between the entrance and the first flight of stairs shall be increased one-half in width in every part for each such additional flight of stairs. In every tenement house hereafter erected, access shall be had from the street to the yard, either in a direct line or through a court.

**First Tier of Beams, Fireproof in All Houses of Over Five Stories, Cellar Ceiling, When Beams Are Not Fireproof.**

§ 21. In all non-fireproof as well as fireproof tenement houses hereafter erected five stories or more in height, exclusive of the cellar, the first floor above the lowest cellar, or, if there be no cellar, above the lowest story, shall be constructed fireproof with iron or steel beams and fireproof flooring; and the bottom flanges and all exposed portions of such iron or steel beams below the abutments of the floor arches or filling shall be entirely encased with hard-burnt clay or porous terra cotta or with metal lath properly secured and plastered on the under side. In all non-fireproof tenement houses hereafter erected less than five stories in height, where the first floor above the lowest cellar, or, if there be no cellar, above the lowest story, is not constructed fireproof with iron or steel beams and fireproof flooring, the cellar ceiling of said tenement house shall be lathed with metal lath and plastered thereon with two coats of brown mortar of good materials, or shall be covered with plaster boards not less than one-half inch in thickness, made of plaster and strong fiber and all joints made true and well pointed.

**Partitions, Construction of.**

§ 22. In all non-fireproof tenement houses hereafter erected, fore and aft stud partitions which rest directly over each other shall run through the wooden floor beams and rest upon the plate of the partition below, and shall have the studding filled in solid between the uprights to the depth of the floor beams with suitable incombustible materials. In all fireproof tenement houses hereafter erected, all partitions shall rest directly upon the fireproof floor construction, and extend to the fireproof beam filling above.

**Cellar Stairs in Non-fireproof Buildings, When to Be Outside; to Be Fireproof; Modification in Certain Houses.**

§ 23. In non-fireproof tenement houses hereafter erected which either are occupied or are arranged to be occupied by more than two families on any floor, or which exceed four stories and cellar in height there shall be no inside stairs communicating between the lowest cellar or other lowest story and the floor next above, but such stairs shall in every case be located outside the building and if inclosed shall be constructed entirely fireproof inclosure with fireproof self-closing doors at all openings. This provision, however, shall not apply to the stairs leading from the entrance story to the upper stories in tenement houses hereafter erected where there is no cellar or other story below the said entrance story. In tenement houses hereafter erected which do not exceed four stories and cellar in height and which also are not occupied or arranged to be occupied by more than two families on any floor, the stairs leading to the cellar may be located inside the building, provided they are entirely enclosed with brick walls and are provided with fireproof self-closing doors at both the top and bottom.

**Cellar Stairs in Fireproof Buildings; When Allowed Inside; Doors.**

§ 24. In every fireproof tenement house hereafter erected the stairs communicating between the lowest cellar or other lowest story and the floor next above, if not located underneath the stairs leading to the upper stories, may be placed inside of the said building; provided that the portion of the cellar or other lowest story into which said stairs lead is entirely shut off by fireproof walls from those portions thereof which are used for the storage of fuel, or in which heating appliances, boilers or machinery are located. All openings in such walls shall be provided with self-closing fireproof doors.

**Closet Under First Story Stairs.**

§ 25. In non-fireproof tenement houses hereafter erected no closet of any kind shall be constructed under any staircase leading from the first story, exclusive of the cellar, to the upper stories, but such space shall be left entirely open and kept clear and free from incumbrance.

**Cellar Entrance.**

§ 26. In every tenement house hereafter erected there shall be an entrance to the cellar or other lowest story from the outside of the said building.

**Fire Stops, Projection of Brick Courses, Floor Beams, Walls.**

§ 27. In tenement houses hereafter erected, in all walls where wooden furring is used all the courses of brick from the under side of the floor beams to the top of the same shall project a distance of at least two inches beyond the inside face of the wall so as to provide an effective fire stop; and wherever floor beams run parallel to a wall and wooden furring is used such beams shall always be kept at least two and one-half inches away from the inside line of the wall and the space between the beams and the wall shall be built up solidly with brickwork from the under side of the floor beams to the top of the same, so as to form an effective fire stop.

**Wooden Tenement Houses; Fire Limits; Dimensions and Occupancy; Sections Which Do Not Apply.**

§ 28. Wooden tenement houses.— Within the fire limits no wooden tenement house shall hereafter be erected, and no wooden building not now used as a tenement house shall hereafter be altered or converted to such use. But outside of the fire limits, tenement houses not exceeding three stories in height, exclusive of the cellar, may be erected of wood, but shall not provide accommodations for, or be occupied, if two stories in height, by more than four families in all, nor by more than one family on any floor. No such building shall exceed forty feet in height, and the side walls of all such building shall be brick filled. And such houses whether of wood or other material, need not comply with the provisions of the following named sections of this act; thirteen, fifteen, sixteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-seven, thirty-seven and thirty-eight, and such houses which do not exceed two stories in height need not have either fire escapes or stairs extending to the roof.

TITLE II.

**Fire Escapes; Non-fireproof Buildings.**

§ 29. Every non-fireproof tenement house, unless provided with fireproof outside stairways directly accessible to each apartment, shall have fire escapes located and constructed as described in section twelve of this act. But a fire escape now erected upon such house shall be deemed sufficient except as provided in the next two sections.

§ 30. In every non-fireproof tenement house there shall be a

separate fire escape directly accessible to each apartment, exclusive of fire escapes in air shafts and courts except as in this section provided. Fire escapes in air shafts and courts shall be deemed sufficient only under the following conditions; the balconies of such fire escapes shall always be properly connected with each other by adequate stairs or stationary iron ladders with openings not less than two feet by three feet, and shall be provided with a goose-neck ladder leading from the top balcony to and above the roof and with a proper and adequate drop ladder from the lowest balcony to the ground; such series of fire escape balconies shall connect directly either at the level of the first tier of beams or in the cellar or basement with a fireproof passageway not less than three feet wide and seven feet high leading directly to the street and affording a safe and adequate means of exit, or there shall be provided safe and adequate means of exit to the adjoining premises either by the removal of the partition fence or by means of a gate which shall not be locked or bolted. No fire escape, however, shall be deemed lawful if located in an inner air shaft or inner court whose least horizontal dimension is less than fifteen feet, nor if located in an outer court the length of which, measured from the extreme rear wall of the building to the furthermost inner point if such court, exceeds thirty feet, nor if the distance from the brick wall forming the side of such outer court to the nearest opposite brick wall is less than six feet. All drop ladders and goose-neck ladders mentioned in this section shall be constructed as required by section twelve of this act. An outer court not exceeding ten feet in length from the extreme rear wall of the building to the furthermost inner point of such court and also not less in width than six feet measured from the brick wall forming the side of such court to the nearest opposite brick wall shall not be deemed a court, but shall be considered as a part of the yard for the purposes of this section. Nothing in this section contained relating to fire escapes in air shafts or courts shall apply to a tenement house erected under the provisions of law in force and effect since April eleventh, nineteen hundred and one. A party wall fire escape balcony on the building connecting with the window of an adjoining building shall not be deemed a sufficient fire escape if there is a door or opening in the walls between the two buildings other than windows in fireproof air shafts. All wooden floor slats and floors in fire escape balconies shall be replaced by proper iron slats or floors. No wooden balcony or wooden outside stairs shall be deemed part of a lawful fire escape.

**Fire Escapes, Continued; Egress.**

§ 31. Whenever a non-fireproof tenement house is not provided with sufficient means of egress in case of fire the department charged with the enforcement of this act may order such additional fire escapes or other means of egress as in its judgment may be necessary.

**Scuttles, Bulkheads, Ladders and Stairs; Access, No Locks.**

§ 32. Every tenement house shall have in the roof a bulkhead or scuttle. No scuttle shall be less in size than two feet by three feet, and all scuttles shall be covered on the outside with metal and shall be provided with stairs or stationary ladders leading thereto and easily accessible to all tenants of the building and kept free from incumbrance, and all scuttles shall be located in the ceiling of the public hall on the top floor, and access through the scuttle to the roof be direct and uninterrupted. When deemed necessary by the department charged with the enforcement of this act, scuttles shall be hinged so as to readily open. Every bulkhead hereafter constructed in a tenement house shall be constructed as provided in section thirteen of this act, and shall have stairs with a guide or handrail leading to the roof, and such stairs shall be kept free from incumbrance at all times. No scuttle and no bulkhead door shall at any time be locked with a key, but either may be fastened on the inside by movable bolts or hooks. All key locks on scuttles and on bulkhead doors shall be removed. No stairs leading to the roof in any tenement house shall be removed and replaced with a ladder.

**Stair Halls, Public Halls and Entrance Halls, in Case of Alterations.**

§ 33. If any now existing tenement house shall be so altered as to increase the number of rooms therein by thirty-three and one-third per centum or more, or if such building is increased in height so that the said building is more than four stories or parts of stories above the curb level, and also the number of rooms is increased therein, the entire stair halls, entrance halls and other public halls of the whole building shall be made to conform to the requirements of sections fourteen to twenty, inclusive, of this act.

**Alteration of Wooden Tenement Houses; Restrictions.**

§ 34. No wooden tenement house shall be increased in height so as to exceed three stories, exclusive of the cellar, nor shall it be altered so as to be occupied, if less than three stories by more than two families on any floor nor by more than four families in all; nor, if three stories, by more than one family on any floor, nor by more than three families in all.

TITLE III.

**Fire Escapes to Be Kept in Repair and Unobstructed.**

Section 35. All fire escapes hereafter constructed upon tenement houses shall be located and constructed as described in section twelve of this act. The owner of every tenement house shall keep all the fire escapes thereon in good order and repair, and whenever rusty shall have them properly painted with two coats of paint. No person shall at any time place any incumbrance of any kind before or upon any such fire escape.

**Stairways, Maintenance, Alterations.**

§ 36. In every tenement house all stairways shall be provided with proper banisters and railings and kept in good repair. In any tenement house any new stairs that may be hereafter constructed leading from the first story to the cellar or basement shall be entirely inclosed with brick walls, and be provided with fireproof self-closing doors at both the top and the bottom. No public hall or stairs in a tenement house shall be reduced in width so as to be less than the minimum width prescribed in sections fourteen to twenty inclusive of this act.

**Shafts; Fireproof Doors; Modification.**

§ 37. All shafts hereafter constructed in tenement houses shall be constructed fireproof throughout, with fireproof self-closing doors at all openings, at each story, except window openings in vent shafts; and, if they extend to the cellar shall also be enclosed in the cellar with fireproof walls and fireproof self-closing doors at all openings. In no case shall any shaft be constructed of materials in which any inflammable material or substance enters into any of the component parts. But nothing in this section contained shall be so construed as to require such enclosures about elevators or dumb-waiters in the well-hole of stairs where the stairs themselves are inclosed in brick or stone walls, and are entirely constructed of fireproof materials as hereinbefore provided.

**Plastering Behind Wainscoting.**

§ 38. When wainscoting is hereafter placed in any tenement house, or any building in process of alteration into a tenement house, the surface of the wall or partition behind such wainscoting shall be plastered down to the floor line, and any intervening space between said plastering and said wainscot shall be filled in solid with incombustible material.

**Wooden Buildings on Same Lot With a Tenement House, No Future Construction or Extension of.**

§ 39. No wooden building of any kind whatsoever shall hereafter be placed or built upon the same lot with a tenement house within the fire limits. And, within the fire limits, no wooden tenement house, and no wooden structure or other building on the same lot with a tenement house, shall hereafter be enlarged, extended or raised; except that a wooden extension not exceeding in total area several square feet may be added to an existing wooden tenement house, provided such extension is used solely for bath rooms or water-closets.

**Combustible Materials, Permit, Feed, Hay, Rags, etc.**

§ 40. No tenement house, nor any part thereof, nor of the lot upon which it is situated, shall be used as a place of storage, keeping or handling of any combustible article except under such conditions as may be prescribed by the fire department, under authority of a written permit issued by said department. No tenement house, nor any part thereof, nor of the lot upon which it is situated, shall be used as a place of storage, keeping or handling of any article dangerous or detrimental to life or health, nor for the storage, keeping or handling of feed, hay, straw, excelsior, cotton, paper stock, feathers or rags.

**Bakeries and Fat Boiling, Ceilings and Walls, No Connection With Rest of Building.**

§ 41. No bakery and no place of business in which fat is boiled, shall be maintained in any tenement house which is not fireproof throughout, unless the ceiling, side-walls, and all exposed iron or wooden girders or columns within the said bakery or within said place where fat boiling is done are made safe by fireproof materials around the same. And there shall be no openings either by door or window, dumbwaiter shafts or otherwise, between said bakery or said place where fat is boiled in any tenement house, and the other parts of said building,

except that in bakeries in which no fat is boiled, and in which no apparatus for fat boiling is present or on the premises, a dumbwaiter communicating between the place where the baking is done and the store above, may be maintained, if entirely enclosed in a brick shaft with walls not less than eight inches thick, without any openings whatever except one door opening in the bakeshop and one door opening in the bakery store; such openings shall each be provided with a fireproof door so arranged that when one door is open or partly open, the other door shall be entirely closed.

### Other Dangerous Businesses, Paints, Oils, Liquors and Drugs, Construction of Transoms, Windows and Doors.

§ 42. All transoms and windows opening into halls from any portion of a tenement house where paint, oil, spirituous liquors or drugs are stored for the purpose of sale or otherwise, shall be glazed with wire-glass or they shall be removed and closed up as solidly as the rest of the wall, and all doors leading into any such hall from such portion of said house shall be made fireproof.

## CHAPTER III.

### LIGHT AND VENTILATION.

#### TITLE I.

**Percentage of Lot Occupied, Method of Measurement, Exceptions.**

§ 51. No tenement house hereafter erected shall occupy more than ninety per centum of a corner lot, or more than seventy per centum of any other lot, except as otherwise provided in sections sixty-one and sixty-two of this act; provided, that the space occupied by the fire escapes of the size hereinbefore prescribed shall not be deemed a part of the lot occupied. For the purposes of this section the measurements shall be taken at the ground level, except that where such a building has no basement, and the cellar ceiling is not more than two feet above the curb level, the measurements as to percentage of lot occupied may be taken at the level of the second tier of beams. The provisions of this section shall not apply to a tenement house hereafter erected running through from one street to another street, provided that the lot on which it is situated does not exceed one hundred feet in depth.

**Height, Governed by Street Width, Measurement.**

§ 52. The height of no tenement house hereafter erected shall by more than one-half exceed the width of the widest street upon which it stands. Such height shall be the perpendicular distance measured in a straight line from the curb level to the highest point of the roof beams; provided that where there are bulkheads exceeding ten feet in height or exceeding in area ten per centum of the area of the roof, the measurements shall be taken to the top of the bulkhead; but this shall not apply to elevator enclosures not exceeding fifteen feet in height. The measurements in all cases shall be taken through the center of the facade of the house.

**Yards, Width, Depth, Unobstructed.**

§ 53. Behind every tenement house hereafter erected there shall be a yard extending across the entire width of the lot, and except upon a corner lot, at every point open from the ground

to the sky unobstructed, except that fire escapes or unenclosed outside stairs may project not over four feet from the rear line of the house. The depth of said yard, measured from the extreme rear wall of the house to the rear line of the lot, shall be as set forth in the two following sections.

**Yards of Interior Lots, Depth.**

§ 54. Except upon a corner lot the depth of the yard behind every tenement house hereafter erected sixty feet in height shall be not less than twelve feet in every part. Said yard shall be increased in depth one foot for every additional twelve feet of height of the building, or fraction thereof; and may be decreased in depth one foot for every twelve feet of height of the building less than sixty feet; but it shall never be less than ten feet in depth in any part.

**Yards of Corner Lots, Depth, Level.**

§ 55. The depth of the yard behind every tenement house hereafter erected upon a corner lot shall be not less than ten feet in every part, provided that where such lot is less than one hundred feet in depth, the depth of the yard may be not less than ten per centum of the depth of such lot, but shall never be less than five feet in every part, nor less than the minimum width of an outer court on the lot line as prescribed by section fifty-eight of this act. Where a tenement house hereafter erected on a corner lot has no basement and the cellar ceiling is not more than two feet above the curb level, said yard may start at the level of the second tier of beams. Where a corner lot is more than fifty feet in width, the yard for that portion in excess of fifty feet shall conform to the provisions of section fifty-four of this act.

**Yard Spaces of Lots Running Through From Street to Street, Size, Level, Exceptions.**

§ 56. Wherever a tenement house hereafter erected is upon a lot which runs through from one street to another street, and said lot is not less than seventy feet nor more than one hundred feet in depth, there shall be a yard space through the center of the lot midway between the two streets, which space shall extend across the full width of the lot and shall never be less than twelve feet in depth from wall to wall, and shall be increased in depth as prescribed in section fifty-four of this act. But where such building has no basement and the

cellar ceiling is not more than two feet above the curb level, such yard space may start at the level of the second tier of beams. Where such lot is over one hundred feet in depth such yard space shall be left through the center of the lot midway between the two streets, and shall extend across the entire width of the lot, and shall not be less than twenty-four feet in depth from wall to wall, and shall be increased in depth as prescribed in section fifty-four of this act. Where a single tenement house hereafter erected runs through from one street to another street and also occupied the entire block, no yard need be provided. Where a single tenement house hereafter erected is situated on a lot formed by the intersection of two streets at an acute angle the yard of the said house need not extend across the entire width of the lot, provided that it extends to a point in line with the middle line of the block.

**Courts, to Be Open, Fire Escape Passage to Street.**

§ 57. No court of a tenement house hereafter erected shall be covered by a roof or skylight, but every such court shall be at every point open from the ground to the sky unobstructed, except as hereinafter otherwise provided, and shall conform to the requirements of the following sections; provided, that an apartment not containing any room fronting upon the street or yard shall have a fire escape in a court projecting not more than four feet from the wall of the house. Such fire escape shall directly connect at the bottom of such court with a fireproof passageway, not less than three feet wide and seven feet high, leading in a straight and direct line to the street.

**Outer Courts, Size of, Exceptions.**

§ 58. Where one side of an outer court is situated on the lot line, the width of the said court, measured from the lot line to the opposite wall of the building, for tenement houses sixty feet in height shall not be less than six feet in any part; and for every twelve feet of increase or fraction thereof in height of the said building, such width shall be increased six inches throughout the entire height of said court; and for every twelve feet of decrease in the height of the said building below sixty feet, such width may be decreased six inches. Wherever an outer court exceeds sixty-five feet in length and does not extend from the street to the yard, the entire court shall be increased in width one foot for every additional thirty feet or fraction thereof in excess of sixty-five feet. Except that in

tenement houses hereafter erected, not exceeding four stories and cellar in height and which also are not occupied or arranged to be occupied by more than eight families in all, or by more than two families on any floor, and in which also each apartment extends through from the street to the yard, the width of an outer court situated on the lot line shall not be less than four feet in any part provided that the length of such outer court does not exceed thirty-six feet.

**Outer Courts, Continued; Between Wings; Exceptions.**

§ 59. Where an outer court is situated between wings or parts of the same building, or between different buildings on the same lot, the width of the said court, measured from wall to wall, for tenement houses sixty feet in height, shall not be less than twelve feet in any part; and for every twelve feet of increase or fraction thereof in the height of the said building, such width shall be increased one foot throughout the entire height of the said court; and for every twelve feet of decrease in the height of the said building below sixty feet such width of the said court may be decreased one foot. Wherever an outer court exceeds sixty-five feet in length, the entire court shall be increased in width two feet for every additional thirty feet or fraction thereof in excess of sixty-five feet. Except that in tenement houses hereafter erected not exceeding four stories and cellar in height and which also are not occupied or arranged to be occupied by more than eight families in all, or by more than two families on any floor, and in which also each apartment extends through from the street to the yard, the width of an outer court situated between wings or parts of the same building, or between different buildings on the same lot, measured from wall to wall, shall be not less than eight feet in any part, provided that the length of said outer court does not exceed thirty-six feet.

**Outer Courts, Continued, Change of Direction, Offset or Recess, Windows.**

§ 60. Wherever an outer court changes its initial horizontal direction, or wherever any part of such court extends in a direction so as not to receive direct light from the street or yard, the length of such portion of said court shall never exceed the width of said portion; such length to be measured from the point at which the change of direction commences. Wherever an outer court is less in depth than the minimum

width prescribed by this title then its width may be equal to, but not less than its depth, provided that such width is never less than four feet in the clear. This exception shall also apply to each offset or recess in outer courts. And no window except windows of water closet compartments, bath rooms or halls shall open upon any offset or recess less than six feet in width.

**Inner Courts, on Lot Line, Size, Exceptions, Bath Room Extensions, Party Line Courts.**

§ 61. Where one side of an inner court is situated on the lot line, the width of the said court measured from the lot line to the opposite wall of the building, for tenement houses sixty feet in height shall not be less than twelve feet in any part, and its other horizontal dimensions shall not be less than twenty-four feet in any part; and for every twelve feet of increase or fraction thereof in the height of the said building, such width shall be increased six inches throughout the entire height of said court, and the other horizontal dimension shall be increased one foot throughout the entire height of said court; and for every twelve feet of decrease in the height of the said building below sixty feet, such width may be decreased six inches and the other horizontal dimension may be decreased one foot. Except that in tenement houses hereafter erected not exceeding four stories and cellar in height and which also are not occupied or arranged to be occupied by more than eight families in all, or by more than two families on any floor, and in which also each apartment extends through from the street to the yard, and which also do not occupy more than seventy-two per centum of the lot, in the case of an interior lot, the width of an inner court situated on the lot line measured from the lot line to the opposite wall of the building shall not be less than eight feet in any part, and its other horizontal dimension shall not be less than fourteen feet in any part. Except also that in such tenement houses which do not exceed three stories and cellar in height, and which also are not occupied, or arranged to be occupied, by more than six families in all, or by more than two families on any floor, a portion of such inner court may be occupied by a bath room extension, provided that such extension has no window facing an opposite building, and that it does not occupy a portion of such court greater than four and one-half feet in width, or seven feet in length, and that between such extension and the lot line the court is never less than three and one-half feet in

width. In such last named tenement houses which do not occupy more than sixty-five per centum of the lot, in the case of an interior lot, where an inner court for its entire length immediately adjoins an existing inner court of equal or greater size in an adjoining building or adjoins such a court in an adjoining building actually in course of construction at the same time, the width of such inner court measured from the lot line to the opposite wall of the building shall be not less than four feet in any part, and not less than eight feet from wall to wall, and its other horizontal dimension shall be not less than twelve and one-half feet.

**Inner Courts, Continued, Not On Lot Line, Size, Exceptions, Offset or Recess, Windows.**

§ 62. Inner courts, continued.— Where an inner court is not situated upon the lot line, but is inclosed on all four sides, the least horizontal dimension of the said court for tenement houses, sixty feet in height, shall not be less than twenty-four feet; and for every twelve feet of increase or fraction thereof in the height of the said building, the said court shall be increased one foot in each horizontal dimension, throughout the entire height of said court, and for every twelve feet of decrease in the height of the said building below sixty feet, the horizontal dimensions of the said court may be decreased one foot in each direction. Except that in tenement houses hereafter erected not exceeding four stories and cellar in height and which also are not occupied or arranged to be occupied by more than eight families in all or by more than two families on any floor, and in which also each apartment extends through from the street to the yard, and which also do not occupy more than seventy-two per centum of the lot, in the case of an interior lot, the least horizontal dimension of an inner court not situated on the lot line, but inclosed on all four sides, shall not be less than fourteen feet. Except also that in such tenement houses which do not exceed three stories and cellar in height and which also are not occupied, or arranged to be occupied, by more than six families in all, or by more than two families on any floor, and which do not occupy more than sixty-five per centum of the lot in the case of an interior lot, the width of such inner court shall not be less than eight feet in any part and its other horizontal dimensions shall not be less than twelve and one-half feet. In inner courts which are not less than ten feet wide in any part, offsets and recesses will be permitted, but where the depth of such offset or recess is less than the minimum width

prescribed, then the width of said offset or recess may be equal to but not less than its depth, provided that such width is never less than four feet in the clear. And no window except windows of water closet compartments, bath rooms or halls shall open upon any offset or recess less than six feet in width.

**Inner Courts, Continued, Intake, Passageway, Open Grilles or Transoms.**

§ 63. Every inner court shall be provided with one or more horizontal intakes at the bottom. Such intakes shall always communicate directly with the street or yard, and shall consist of a passageway not less than three feet wide and seven feet high, which shall be left open, or if not open there shall always be provided in said passageway open grilles or transoms of a size not less than five square feet each, and such open grilles or transoms shall never be covered over by glass or in any other way. There shall be at least two such grilles or transoms in each such passageway, one at the inner court and the other at the street or yard, as the case may be.

**Outer and Inner Courts — Windows at Angles, Corners, Height, Level, Skylight in Court.**

§ 64. Nothing contained in the foregoing sections concerning outer and inner courts shall be construed as preventing windows at the angles of said courts, provided that the running length of the wall containing such windows does not exceed six feet. Except that in outer or inner courts of a less size than the minimum prescribed for tenement houses sixty feet in height, the running length of the wall containing windows in the angles of said courts, shall not exceed four feet. Nothing in this section contained shall be construed so as to permit the reduction of any inner court by cutting off the corners thereof when such court is less than eight feet in width, measured from the lot line to the opposite wall of the building. In construing said sections the height of the building is to be measured from the curb level to the top of the highest wall enclosing or forming such court. When a tenement house hereafter erected exceeding three stories in height has no basement and the cellar ceiling is not more than two feet above the curb level, the courts mentioned in the seven preceding sections may start at the level of the second tier of beams. Where an inner court starts at the second tier of beams, a portion of such court having a least horizontal dimension equal to the minimum

width of the court as prescribed by sections sixty-one and sixty-two of this act, shall be left unbuilt upon, and shall communicate directly with the intake required by section sixty-three of this act. Nothing in this section contained shall be construed so as to permit any room without a window opening on the street or yard or on a court in every part the dimensions prescribed in the foregoing sections. Where a court starts at the level of the second tier of beams in whole or in part, and the bottom of said court is a skylight over a store or hall, proper access to the top of said skylight shall be provided, and said skylight shall be so arranged as to be easily cleaned.

**Rear Tenements, Two Tenements on Same Lot Prohibited.**

§ 65. No separate tenement house shall hereafter be erected upon the rear of a lot fifty feet or less in width where there is a tenement house on the front of the said lot, nor upon the front of any such lot upon the rear of which there is such a tenement house.

**Buildings on Same Lot With Tenement Houses; Open Space; Dimensions.**

§ 66. If any building is hereafter placed on the same lot with a tenement house there shall always be maintained between the said buildings an open unoccupied space extending upwards from the ground and extending across the entire width of the lot; where either building is sixty feet in height such open space shall be twenty-four feet from wall to wall; and for every twelve feet of increase or fraction thereof in the height of such building, such open space shall be increased one foot in depth throughout its entire width, and for every twelve feet of decrease in the height of such building below sixty feet, the depth of such open space may be decreased one foot. And no building of any kind shall be hereafter placed upon the same lot with a tenement house so as to decrease the minimum size of courts or yards as hereinbefore prescribed. And if any tenement house is hereafter erected upon any lot upon which there is already another building, it shall comply with all of the provisions of this act, and in addition the space between the said building and the said tenement house shall be of such size and arranged in such manner as is prescribed in this section, in height of the highest building on the lot to regulate the dimensions.

**Rooms, Lighting and Ventilation of; Windows; Alterations.**

§ 67. In every tenement house hereafter erected every room, except water-closet compartments and bathrooms, shall have at least one window opening directly upon the street or upon a yard or court of the dimensions specified in sections fifty-three to sixty-five of this act, and such window shall be so located as to properly light all portions of such rooms. Wherever a room in such tenement house opens upon an inner court less than ten feet wide, measured from the lot line to the opposite wall of the building, such room shall be provided with a sash window, communicating with another room in the same apartment, such window to contain not less than ten square feet of glazed surface, and to be made so as to readily open. No tenement house shall be so altered that any room or public hall or stairs shall have its light or ventilation diminished in any way not approved by the department charged with the enforcement of this act.

**Windows in Rooms, Area, Height.**

§ 68. In every tenement house hereafter erected the total window area in each room, except water-closet, compartments and bath-rooms, shall be at least one-tenth of the superficial area of the room, and the top at least of one window shall not be less than seven feet six inches above the floor, and the upper half of it shall be made so as to open the full width. No such window shall be less than twelve square feet in area between the stop beads.

**Rooms, Size of, Floor Area, Height.**

§ 70. In every tenement house hereafter erected all rooms, except water-closet compartments and bathrooms, shall be of the following minimum sizes: In each apartment there shall be at least one room containing not less than one hundred and twenty square feet of floor area, and each other room shall contain at least seventy square feet of floor area. Each room shall be in every part not less than nine feet high from the finished floor to the finished ceiling; provided that an attic room need be nine feet high in but one-half in area.

**Alcove.**

§ 71. Alcove rooms must conform to all the requirements of other rooms.

**Public Halls; Location and Number of Windows, Recesses, Separate Halls, Stair Wells, Glass Panels and Transoms.**

§ 72. In every tenement house hereafter erected, which is occupied or arranged to be occupied by more than two families on any floor or which exceeds four stories and cellar in height, every public hall shall have at least one window opening directly upon the street or upon a yard or court. Either such window shall be at the end of said hall, with the plane of the window at right angles to the axis of said hall or there shall be at least one window opening directly upon the street or upon a yard or court in every twenty feet in length or fraction thereof of said hall; but this provision for one window in every twenty feet of hallway shall not apply to that portion of the entrance hall between the entrance and the first flight of stairs, provided that the entrance door contains not less than five square feet of glazed surface. In every public hall in such tenement house recesses or returns the length of which does not exceed twice their width will be permitted without an additional window. But wherever the length of such recess or return exceeds twice its width the above provisions in reference to one window in every twenty feet of hallway shall be applied. Any part of a hall which is shut off from any other part of said hall by a door or doors shall be deemed a separate hall within the meaning of this section. In every tenement house hereafter erected where the public hall is not provided with a window opening directly to the outer air as above provided, there shall be a stair-well not less than twelve inches wide extending from the entrance floor to the roof, and all doors leading from such public halls shall be provided with translucent glass panels of an area of not less than five square feet for each door, and also with fixed transoms of translucent glass over each door.

**Windows and Skylights for Public Halls, Size of, Ventilators, Louvres Sashes.**

§ 73. In every tenement house hereafter erected one at least of the windows provided to light each public hall or part thereof shall be at least two feet six inches wide and five feet high, measured between stop beads. In every such house there shall be in the roof, directly over each stair-well, a ventilating skylight provided with ridge ventilators having a minimum opening of forty square inches, or such skylight shall be provided with fixed or movable louvres; the glazed roof of such skylight

shall not be less than twenty square feet in area. In tenement houses hereafter erected where the stairs and public halls are not provided with windows on each floor opening directly to the outer air, the skylights shall be provided with both such ridge ventilators, and also with fixed or movable louvres or movable sashes.

**Windows for Stair Halls; Size of Sash Door.**

§ 74. In every tenement house hereafter erected the aggregate area of windows to light or ventilate stair halls shall be at least eighteen square feet for each floor. There shall be provided for each story at least one of said windows, which shall be at least two and a half feet wide and five feet high, measured between the stop beads. A sash door shall be deemed the equivalent of a window in sections seventy-two, seventy-three and seventy-four of this act, provided that such door contains the amount of glazed surface provided for such windows.

**Privacy.**

§ 75. In every apartment of three or more rooms in a tenement house hereafter erected, access to every living room and bedroom and to at least one water-closet compartment shall be had without passing through any bedroom.

TITLE II.

**Percentage of Lot Occupied; Alterations; Method of Measurement.**

§ 76. No tenement house shall hereafter be enlarged, or its lot be diminished, so that a greater percentage of the lot shall be occupied by buildings or structures than provided in section fifty-one of this act, the measurements may be taken at the level of the second tier of beams; provided that the space occupied by fire escapes of the size hereinbefore prescribed, and by chimneys or flues located in yards and attached to the houses which do not exceed five square feet in area and do not obstruct light or ventilation, shall not be deemed a part of the lot occupied.

**Yards; Alterations; Measurement.**

§ 77. No tenement house shall hereafter be enlarged or its lot be diminished, so that the yard shall be less in depth than the minimum depths prescribed in sections fifty-three, fifty-four, fifty-five and fifty-six of this act for tenement houses

hereafter erected. The measurements in all cases to be taken from the extreme rear wall of the building to the rear lot line, and across the full width of the lot, and such yard shall be at every point open from the ground to the sky, except as provided in sections fifty-three and seventy-six of this act.

### Height.

§ 77a. No tenement house shall be increased in height so that the building shall exceed by more than one-half the width of the widest street on which it stands.

### Additional Rooms and Halls.

§ 78. Any additional room or hall that is hereafter constructed or created in a tenement house shall comply in all respects with the provisions of chapter three of this act, except that such rooms may be of the same height as the other rooms on the same story of the house.

### Rooms, Lighting and Ventilation of, Continued; Window in Adjoining Room; Size of Sash Windows; Alcove Opening.

§ 79. No room in a now existing tenement house shall hereafter be occupied for living purposes unless it shall have a window upon the street, or upon a yard not less than four feet deep, or upon a court or shaft of not less than twenty-five square feet in area, open to the sky without roof or skylight. Provided, however, that such room may be occupied for living purposes if it has a sash window opening into an adjoining room in the same apartment which latter room either opens directly on the street or on a yard of the above dimensions, or itself connects directly by a similar sash window with such an outer room. Said sash windows shall be at least three feet by five feet between stop beads, and both halves shall be made so as to readily open. Where it is not possible to construct a window of this width, then such window may be of such size as may be prescribed by the department charged with the enforcement of this act, but such window shall never contain less than fifteen square feet of glazed surface. An alcove opening of no less dimension than said sash window, in addition to the usual door opening, shall be deemed its equivalent.

**Public Halls, Lighting of; Glass in Doors; Sash Windows of Wire Glass; Windows at End; Light Burning in Daytime.**

§ 80. In every tenement house four stories or over in height, whenever a public hall on any floor is not light enough in the daytime to permit a person to read in every part thereof without the aid of artificial light, the wooden panels in the doors located at the ends of the public halls and opening into rooms shall be removed, and ground glass, or other translucent glass or wire glass panels of an aggregate area of not less than four square feet for each door shall be substituted; or in lieu of removing the panels in the doors a fixed sash window of wire glass of an area of not less than five square feet may be cut into the partitions separating the said hall from a room which opens directly upon the street or upon a yard, court, or shaft of the dimensions specified in the last section; or said public hall may be lighted by a window or windows at the end thereof with the plane of the window at right angles to the axis of the said hall, said window opening upon the street or upon a yard, court, or shaft of said dimensions. In every such house where the public halls and stairs are not provided with windows opening directly to the street or yard, and such halls and stairs are, in the opinion of the department charged with the enforcement of this act, not sufficiently lighted, the owner of such house shall keep a proper light burning in the hallway, near the stairs, upon each floor, as may be necessary, from sunrise to sunset.

**Light and Vent Shafts in Existing Buildings; Area, to Be Open; Intake.**

§ 81. Any shaft used or intended to be used to light or ventilate rooms used or intended to be used for living purposes, and which may be hereafter placed in a tenement house, erected prior to April tenth, nineteen hundred and one, shall not be less in area than twenty-five square feet, nor less than four feet in width in any part, and such shaft shall under no circumstances be roofed or covered over at the top with a roof or skylight; every such shaft shall be provided at the bottom with a horizontal intake or duct, of a size not less than four square feet, and communicating directly with the street or yard, and such duct shall be so arranged as to be easily cleaned out.

TITLE III.

**Public Halls, Night Lighting.**

§ 82. In every tenement house a proper light shall be kept burning by the owner in public hallways, near the stairs, upon the entrance floor, and upon the second floor, above the entrance floor of said house, every night from sunset to sunrise throughout the year, and upon all other floors of the said house from sunset until ten o'clock in the evening.

**Skylights Over Stair Well; Size; Exceptions; Removal of Dome Lights.**

§ 83. In every tenement house there shall be in the roof, directly over each stair well, a ventilating skylight. Provided that this section shall not apply to a tenement house now having a bulkhead in the roof over the main stairs, which bulkhead is provided with windows made so as to readily open, and with not less than twelve square feet of glass in the top of said bulkhead. In tenement houses erected prior to April tenth, nineteen hundred and one, the roofs of such skylights shall contain the following amounts of glazed surface: Not less than twelve square feet in any tenement house; in four-story buildings not less than fifteen square feet; in five-story buildings not less than eighteen square feet; in buildings over five stories, three square feet for each additional story. In tenement houses erected prior to April tenth, nineteen hundred and one, where the public halls and stairs are heated by steam heat or other artificial heat, such skylights shall be provided with ridge ventilators having a minimum opening of forty square inches, and also with either fixed louvres or movable louvres, or movable sashes, as the owner may elect. In tenement houses erected prior to April tenth, nineteen hundred and one, in which the halls are not heated by artificial heat, and which exceed three stories in height, or which are occupied or arranged to be occupied by more than four families in all, such skylights shall be provided with ridge ventilators having a minimum opening of forty square inches, and also with fixed louvres. In such houses which do not exceed four stories in height, and which are not occupied or arranged to be occupied by more than four families in all, such skylights shall be provided with ridge ventilators having a minimum opening of forty square inches. All skylights hereafter placed in any tenement house shall conform to the provisions of section seventy-three of this act. All existing dome lights or other obstructions to skylight ventilation shall be removed.

**Chimneys or Fireplaces.**

§ 84. In every tenement house there shall be adequate chimneys running through every floor with an open fireplace or grate, or place for a stove, properly connected with one of said chimneys for every apartment.

**Vent Shafts; Area, to Be Open; Intake.**

§ 85. Every vent shaft hereafter constructed in a tenement house shall be at least twenty square feet in area, and the least dimensions of such shaft shall not be less than four feet; and if the building be above sixty feet in height such shaft shall throughout its entire height be increased in area three square feet for each additional twelve feet of height or fraction thereof; and for each twelve feet of height less than sixty feet such shaft may be decreased in area three square feet. A vent shaft may be enclosed on all four sides, but shall not be roofed or covered over in any way. Every such shaft shall be provided with a horizontal intake or duct at the bottom, communicating with the street or yard or with a court; such duct or intake to be not less than four square feet in total area, and to be so arranged as to be easily cleaned out.

## CHAPTER IV.

### SANITARY PROVISIONS.

#### TITLE I.

**Basements and Cellars, for Living Purposes, in Houses Hereafter Erected or Altered.**

§ 91. In tenement houses hereafter erected no room in the cellar or in the basement shall be constructed, altered, converted or occupied for living purposes, unless all of the following conditions are complied with:

**Height of Room.**

Subdiv. 1. Such room shall be at least nine feet high in every part from the floor to the ceiling. Provided, that in buildings already erected and not now used as tenement houses but hereafter altered or converted to such use, such room shall be not less than seven feet high in every part.

**Height of Ceiling Above Ground Level.**

Subdiv. 2. The ceiling of such room shall be at least four feet and six inches above the surface of the street or ground outside of or adjoining the same.

**Water Closet.**

Subdiv. 3. There shall be appurtenant to such room the use of a separate water closet, constructed and arranged as required by section ninety-five of this act.

**Windows.**

Subdiv. 4. Such room shall have a window or windows opening upon the street, or upon a yard or court. The total area of windows in such room shall be at least one-eighth of the superficial area of the room, and one-half of the sash shall be made to open the full width, and the top of each window shall be within six inches of the ceiling.

Subdiv. 5. All walls surrounding such room shall be damp-proof.

Subdiv. 6. The floor of such room shall be damp-proof and water-proof.

**Basements and Cellars, Damp and Waterproof; Light and Ventilation.**

§ 92. Every tenement house hereafter erected shall have all walls below the ground level and all cellar or lower floors damp-proof and water-proof. When necessary to make such walls and floors damp-proof and water-proof, the damp-proofing and water-proofing shall run through the walls and up the same as high as the ground level and shall be continued throughout the floor, and the said cellar or lowest floor shall be properly constructed so as to prevent dampness or water from entering. All cellars and basements in such tenement houses shall be properly lighted and ventilated to the satisfaction of the department charged with the enforcement of this act.

**Shafts, Courts, Areas and Yards, to Light Living Rooms; Level, Drainage; Concrete May Be Required.**

§ 93. In every tenement house hereafter erected the bottom of all shafts, courts, areas and yards which extend to the basement for light or ventilation of living rooms, must be six inches below the floor level of the part occupied or intended to be occupied. In every tenement house all shafts, courts, areas and yards shall be properly graded and drained, and connected with the street sewer so that all water may pass freely into it. And when required by the department charged with the enforcement of this act shall be properly concreted.

**Water Supply; Sink.**

§ 94. In every tenement house hereafter erected there shall be in each apartment a proper sink with running water.

**Water Closet Accommodations in Each Apartment; Separation, Size, Window, Skylight; General Toilet Room; No Water Closet in Cellar Without Permit; Night Lighting, Glass Panels or Transom; Water-proof Floor; No Drip Trays or Woodwork Enclosures.**

§ 95. In every tenement house hereafter erected there shall be a separate water closet in a separate compartment within each apartment, provided that where there are apartments consisting of but one or two rooms, there shall be at least one water closet for every three rooms. Every water closet and bath hereafter placed in any tenement house shall be placed in a compartment completely separated from every other water closet and bath; such compartment shall not be less than two feet and

four inches wide, and shall be enclosed with plastered partitions, which shall extend to the ceiling. In tenement houses erected after April tenth, nineteen hundred and one, such compartments shall have a window opening directly upon the street or yard, or upon a court or vent shaft. In tenement houses erected prior to April tenth, nineteen hundred and one, such compartments shall have a window opening directly upon the street, or upon a yard not less than four feet deep, or upon a court or shaft of not less than twenty-five square feet in area, open to the sky without roof or skylight. Every such window shall be at least one foot by three feet between stop beads, and the entire window shall be made so as to readily open. When, however, such water closet compartment is located on the top floor and is lighted and ventilated by a skylight over it, or is located at the bottom of a shaft or court of lawful size, and is lighted and ventilated by a skylight over it at the bottom of such shaft or court, no window shall be necessary, provided the roof of such skylight contains at least three square feet of glazed surface and is arranged so as to readily open. Nothing in this section in regard to the separation of water closet compartments from each other shall apply to a general toilet room containing several water closets hereafter placed in a tenement house, provided such water closets are supplemental to the water closet accommodations required by law for the use of the tenants of the said house. Nothing in this section in regard to the ventilation of water closet compartments shall apply to a water closet hereafter placed in a tenement house, where it is provided to replace a defective fixture in the same position and location. No water closet shall be maintained in the cellar of any tenement house without a special permit in writing from the department charged with the enforcement of this act, which shall have power to make rules and regulations governing the maintenance of such closets. Every water-closet compartment hereafter placed in any tenement house shall be provided with proper means of lighting the same at night. If fixtures for gas or electricity are not provided in said compartment, then the door of said compartment shall be provided with translucent glass panels, or with a translucent glass transom, not less in area than four square feet. The floor of every such water-closet compartment shall be made waterproof with asphalt, tile, stone, or some other waterproof material; and such waterproofing shall extend at least six inches above the floor so that the said floor can be washed or flushed out without leaking. No drip trays shall be permitted. No water-closet fixtures shall be inclosed with any woodwork.

### Plumbing, Exposure, Floor Openings.

§ 96. In every tenement house hereafter erected all plumbing pipes shall be exposed, when so required by the department charged with the enforcement of this act. In all tenement houses hereafter erected where plumbing or other pipes pass through floors or partitions, the openings around such pipes shall be sealed or made air tight with plaster, or other incombustible materials, so as to prevent the passage of air or the spread of fire from one floor to another or from room to room.

TITLE II.

### Basements and Cellars; Permit for Occupation for Living Purposes; Conditions of Issue.

§ 97. Hereafter in any tenement house no room in the basement or cellar shall be occupied for living purposes without a written permit from the department charged with the enforcement of this act, and such permit shall be kept readily accessible in the main living room of the apartment containing such room. And no such room in a tenement house erected prior to April tenth, nineteen hundred and one, shall hereafter be occupied unless all the following conditions are complied with. The said written permit shall be issued when all of the said conditions are complied with. If refused, the reason for such refusal shall be stated by said department, in writing, and a copy thereof shall be kept in a proper book in the office of said department, and be accessible to the public.

### Height of Room.

Subdivision 1. Such room shall be at least seven feet high in every part from the floor to the ceiling.

### Height Above Ground Level.

Subdiv. 2. The ceiling of such room shall be in every part at least two feet above the surface of the street or ground outside of or adjoining the same.

### Water Closet.

Subdiv. 3. There shall be appurtenant to such room the use of a water closet.

**Open Space Outside.**

Subdiv. 4. There shall be outside of and adjoining such room, and extending along the entire frontage of at least one of the rooms of the apartment, an open space of at least two feet six inches wide in every part, unless such room extends for more than one-half of its height above the curb level. Such space shall be well and effectually drained.

**Windows.**

Subdiv. 5. Such room shall have a window or windows opening to the outer air of at least nine square feet in size clear of the sash frame, and which shall have been made to readily open for purposes of ventilation.

**Damp-proof.**

Subdiv. 6. If the house is situated over marshy ground, or ground on which water lies, or ground on which there is water pressure from below, the lowest floor shall have been made waterproof and damp-proof.

**General Requirements.**

Subdiv. 7. Such room shall have sufficient light, shall be well drained and dry, and shall be fit for human habitation.

**Water-Closets; Removal of Woodwork; Maintenance.**

§ 98. In all now existing tenement houses the woodwork inclosing all water closets shall be removed from the front of said closets, and the space underneath the seat shall be left open. The floor or other surface beneath and around the closet shall be maintained in good order and repair and if of wood shall be kept well painted with light-colored paint.

**Public Sinks; Removal of Woodwork; Maintenance.**

§ 99. In all now existing tenement houses the woodwork inclosing sinks located in the public halls or stairs shall be removed and the space underneath said sinks shall be left open. The floors and wall surfaces beneath and around the sink shall be maintained in good order and repair, and if of wood shall be kept well painted with light-colored paint.

**Privy Vaults, School Sinks and Water-Closets; Removal; Replacement By Water Closets; Requisites of New Structure; One Closet for Each Two Families.**

§ 100. In all new existing tenement houses, where a connection with a sewer is possible, all school sinks, privy vaults or other similar receptacles used to receive fecal matter, urine or sewage, shall before January first, nineteen hundred and three, be completely removed and the place where they were located properly disinfected under the direction of the department charged with the enforcement of this act. Such appliances shall be replaced by individual water closets of durable non-absorbent material, properly sewer connected, and with individual traps, and properly connected flush tanks providing an ample flush of water to thoroughly cleanse the bowl. Each water closet shall be located in a compartment completely separated from every other water-closet, and such compartment shall contain a window of not less than three square feet in area opening directly to the outer air. The floors of the water-closet compartments shall be water-proof, as provided in section ninety-five of this act. Where water-closets are placed in the yard to replace school sinks or privy vaults long hopper closets may be used; but all traps, flush tanks and pipes shall be protected against the action of frost. In such cases the structure containing the water-closets shall not exceed ten feet in height and shall not be considered as increasing the percentage of the lot occupied nor shall it be subject to the provisions of section sixty-six of this act, provided that it does not occupy more than fifty per centum of the open space or yard in which it is placed, and provided further that the use of said structure is limited solely to water-closet purposes. Such structure shall be provided with a ventilating skylight in the roof, of an adequate size, and each water-closet shall be located in a compartment completely separated from every other water closet. Proper and adequate means for lighting the structure at night shall be provided. There shall be provided at least one water-closet for every two families in every now existing tenement house. Except as in this section otherwise provided such water-closets and all plumbing in connection therewith shall be in accordance with the ordinances and regulations in relation to plumbing and drainage

TITLE III.

**Basements and Cellars, Floors, Ceilings.**

§ 101. The floor of the cellar or lowest floor of every tenement house shall be water tight. And the cellar ceiling shall

be plastered, when so required by the department charged with the enforcement of this act except where the first floor above the cellar is constructed of iron beams and fireproof filling.

**Cellar Walls and Ceilings, Paint or Whitewash.**

§ 102. The cellar walls and ceilings of every tenement house shall be thoroughly whitewashed or painted a light color by the owner and shall be so maintained. Such whitewash or paint shall be renewed whenever necessary, as may be required by the department charged with the enforcement of this act.

**Repairs, Roof; Drainage of Rain Water.**

§ 103. Every tenement house and all the parts thereof shall be kept in good repair and the roof shall be kept so as not to leak, and all rain water shall be so drained and conveyed therefrom as to prevent its dripping on to the ground or causing dampness in the walls, ceilings, yards or areas.

**Water Supply on Each Floor.**

§ 104. Every tenement house shall have water furnished in sufficient quantity at one or more places on each floor occupied by or intended to be occupied by one or more families. The owner shall provide proper and suitable tanks, pumps or other appliances to receive and to distribute an adequate and sufficient supply of such water at each floor in the said house, at all times of the year, during all hours of the day and night. But a failure in the general supply of water by the city authorities shall not be construed to be a failure on the part of such owner, provided that proper and suitable appliances to receive and distribute such water have been provided in said house.

**Cleanliness of Buildings, Duty of Owner.**

§ 105. Every tenement house and every part thereof shall be kept clean and free from an accumulation of dirt, filth or garbage, or other matter in or on the same, or in the yards, courts, passages, areas or alleys connected with or belonging to the same. The owner of every tenement house or part thereof shall thoroughly cleanse all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, privies, water-closets, cesspools, drains, halls, cellars, roofs and all other parts of the said tenement house, or part of the house of which he is the owner, to the satisfaction of the tenement house department, and shall keep the said parts of the said tenement house in a cleanly con-

dition at all times. No person shall place filth, urine or fecal matter in any place in a tenement house other than that provided for the same, or keep filth, urine, or fecal matter in his apartment or upon his premises such length of time as to create a nuisance.

**Shafts and Courts; Door or Window for Cleaning.**

§ 106. In every tenement house there shall be, at the bottom of every shaft and inner court a door giving sufficient access to such shaft or court to enable it to be properly cleaned out. In shafts or courts of a less size than prescribed in sections sixty-one and sixty-two of this act, such door shall be fireproof and self-closing. Provided, that where there is already a window or door in a tenement house, giving proper access to such shaft or court, such window or door shall be deemed sufficient.

**Walls of Courts and Shafts to Be Kept Painted a Light Color.**

§ 107. The walls of all yard courts, inner courts and shafts, unless built of a light color brick or stone, shall be thoroughly whitewashed by the owner or shall be painted a light color by him, and shall be so maintained. Such whitewash or paint shall be renewed whenever necessary, as may be required by the department charged with the enforcement of this act.

**Wall Paper.**

§ 108. No wall paper shall be placed upon a wall or ceiling of any tenement house unless all wall paper shall first be removed therefrom and said wall and ceiling thoroughly cleaned.

**Receptacles for Ashes, Garbage and Refuse.**

§ 109. The owner of every tenement house shall provide for said building proper and suitable conveniences or receptacles for ashes, rubbish, garbage, refuse and other matter.

**Prohibited Uses; No Animal on Premises; Exception Beyond Fire Limits.**

§ 110. No horse, cow, calf, swine, sheep or goat shall be kept in a tenement house, or on the same lot or premises thereof, and no tenement house, or the lot or premises thereof shall be used for a lodging house or stable, or for the storage or handling of rags. Except that, outside of the fire limits, not more than

two horses may be kept on such lot or premises, provided they are stabled at least twenty feet distant from any building used for living purposes, and that such stabling is not detrimental to health in the opinion of the department charged with the enforcement of this act.

**Janitor or Housekeeper.**

§ 111. Whenever there shall be more than eight families living in any tenement house, in which the owner thereof does not reside, there shall be a janitor, housekeeper or some other responsible person who shall reside in said house and have charge of the same, if the department charged with the enforcement of this act shall so require.

**Overcrowding; Air Space.**

§ 112. No room in any tenement house shall be so overcrowded that there shall be afforded less than four hundred cubic feet of air to each adult, and two hundred cubic feet of air to each child under twelve years of age occupying such room.

## CHAPTER V.

### REMEDIES.

#### TITLE I.

*General Powers and Duties.*

**Permit to Commence Building; To Alter; Sworn Statement; Plans; Designation of Agent; Certificate of Approval; Amendments; Approval Expires in One Year; May Be Cancelled or Revoked.**

§ 121. Before the construction or alteration of a tenement house, or the alteration or conversion of a building for use as a tenement house, is commenced, and before the construction or alteration of any building or structure on the same lot with a tenement house, the owner, or his agent or architect, shall submit to the department charged with the enforcement of this act a detailed statement in writing, verified by the affidavit of the person making the same, of the specifications for the construction and for the light and ventilation of such tenement house or building, upon a blank or form to be furnished by such department, and also a full and complete copy of the plans of such work. Such statement shall give in full the name and residence, by street and number, of the owner or owners of such tenement house or building. If such construction, alteration, or conversion, is proposed to be made by any other person than the owner of the land in fee, such statement shall contain the full name and residence, by street and number, not only of the owner of the land, but of every person interested in such tenement house, either as owner, lessee or in any representative capacity. Said affidavit shall allege that said specifications and plans are true and contain a correct description of such tenement house, building, structure, lot and proposed work. The statements and affidavits herein provided for may be made by the owner, or the person who proposes to make the construction, alteration or conversion, or by his agent or architect. No person, however, shall be recognized as the agent of the owner, unless he shall file with the said department a written instrument, signed by such owner, designating him as such agent. Any false swearing in a material point in any such affidavit shall be deemed perjury. Such specifications, plans and statements shall be filed in the said department and shall be deemed public

records, but no such specifications, plans or statements shall be removed from said department. The said department shall cause all such plans and specifications to be examined. If such plans and specifications conform to the provisions of this act and to the building ordinances and regulations they shall be approved by such department, and a written certificate to that effect shall be issued to the person submitting the same. The department may, from time to time, approve changes in any plans and specifications previously approved by it, provided the plans and specifications when so changed shall be in conformity with law. The construction, alteration or conversion of such tenement house, building, or structure or any part thereof, shall not be commenced until the filing of such specifications, plans and statements, and the approval thereof, as above provided. The construction, alteration or conversion of such house, building or structure, shall be in accordance with such approved specifications and plans. Any permit or approval which may be issued by the department charged with the enforcement of this act, but under which no work has been done above the foundation walls within one year from the time of the issuance of such permit or approval, shall expire by limitation. Said department shall have power to revoke or cancel any permit or approval in case of any failure or neglect to comply with any of the provisions of this act, or in case any false statement or representation is made in any specifications, plans or statement submitted or filed for such permit or approval.

**Certificate of Compliance; No Occupancy Until Issued.**

§ 122. No building hereafter constructed as or altered into a tenement house shall be occupied in whole or in part for human habitation until the issuance of a certificate by the department aforesaid that said building conforms in all respects to the requirements of this act. Such certificate shall be issued within ten days after written application therefor, if said building at the date of such application shall be entitled thereto.

**Unlawful Occupation; Penalty; Mortgage Due; No Rent Recoverable; No Water Supplied.**

§ 123. If any building hereafter constructed as or altered into a tenement house be occupied in whole or in part for human habitation in violation of the last section, during such unlawful occupation any bond or note secured by a mortgage upon said building, or the lot upon which it stands, may be declared due

at the option of the mortgagee. No rent shall be recoverable by the owner or lessee of such premises for said period, and no action or special proceeding shall be maintained therefor, or for possession of said premises for non-payment of such rent. The department of water supply shall not permit water to be furnished in any such tenement house, and said premises shall be deemed unfit for human habitation, and the tenement house department shall cause them to be vacated accordingly.

**Enforcement.**

§ 124. Except as herein otherwise provided, the provisions of this act shall be enforced by the department of any city to which this act applies, which is now charged with the enforcement of laws, ordinances and regulations relating to similar subject matter in tenement houses.

**Violations; Other Provisions for Enforcement Not Abrogated.**

§ 125. Nothing in this act shall be construed to abrogate or impair the powers of the department of health, the department of buildings or of the courts to enforce any provisions of the charter or building ordinances and regulations not inconsistent with this act, or to prevent or punish violations thereof.

**Penalties for Violations; Misdemeanor; Fine or Imprisonment; Section 131; Fire Escape Encumbrances; Civil Penalty; Costs; Non-compliance After Five Days' Notice; Jurisdiction of Courts; Lien on House and Lot.**

§ 126. Every person who shall violate or assist in the violation of any provision of this act shall be guilty of a misdemeanor punishable by imprisonment for ten days for each and every day that such violation shall continue, or by a fine of not less than ten dollars or more than one hundred dollars if the offense be not wilful, or of two hundred and fifty dollars if the offense be wilful, and in every case of ten dollars for each day after the first that such violation shall continue, or by both such fine and imprisonment in the discretion of the court; provided, that the punishment for a violation of section one hundred and thirty-one of this act shall be a fine of fifty dollars; and provided further, that the penalty for encumbrance of a fire escape by an occupant of the tenement house shall be a fine of ten dollars, which the nearest police magistrate shall have

jurisdiction to impose. The owner of any tenement house or part thereof, or of any building or structure upon the same lot with a tenement house, or of the said lot, where any violation of this act or a nuisance exists, and any person who shall violate or assist in violating any provision of this act, or any notice or order of the department charged with its enforcement, shall also jointly and severally for each such violation and each such nuisance be subject to a civil penalty of fifty dollars. Such persons shall also be liable for all costs, expenses and disbursements paid or incurred by said department, by any of the officers thereof or by any agent, employe or contractor of the same, in the removal of any such nuisance or violation. Any person who having been served with a notice or order to remove any such nuisance or violation, shall fail to comply with said notice or order within five days after such service, or shall continue to violate any provision or requirement of this act in the respect named in said notice or order, shall also be subject to a civil penalty of two hundred and fifty dollars. For the recovery of any such penalties, costs, expenses or disbursements, an action may be brought in any court of civil jurisdiction in said cities. In case the notice required by section one hundred and thirty-one of this act is not filed, or in case the owner, lessee or other person having control of such tenement house does not reside within the state, or cannot, after diligent effort be served with process therein, the existence of a nuisance or of any violation of this act, or of any violation of an order or a notice made by said department, in said tenement house or on the lot on which it is situated, shall subject said tenement house and lot to a penalty of two hundred and fifty dollars. Said penalty shall be a lien upon said house and lot.

**Violation of Building Laws, Ordinances and Regulations; Persons Liable.**

§ 127. Any owner, agent, architect, contractor, sub-contractor, or foreman who shall, in the construction or alteration of any building intended to be used as a tenement house, knowingly violate any of the provisions of the building laws, ordinances or regulations shall be guilty of a misdemeanor.

**Procedure; Action; Injunction; Abatement; Costs; Action to Establish Lien; Sale of Property.**

§ 128. Except as herein otherwise specified, the procedure for the prevention of violations of this act, or for the vacation of premises unlawfully occupied, or for other abatement of nui-

sance in connection with a tenement house, shall be as set forth in charter and ordinances. In case any tenement house, building or structure or any part thereof is constructed, altered, converted or maintained in violation of any provision of this act or of any order or notice of the department charged with its enforcement, or in case a nuisance exists in any such tenement house, building or structure or upon the lot on which it is situated, said department may institute any appropriate action or proceeding to prevent such unlawful construction, alteration, conversion or maintenance, to restrain, correct or abate such violation or nuisance, to prevent the occupation of said tenement house, building or structure, or to prevent any illegal act, conduct or business in or about such tenement house or lot. In any such action or proceeding said department may, by affidavit setting forth the facts, apply to the supreme court or to any justice thereof, for an order granting the relief for which said action or proceeding is brought, or for an order enjoining all persons from doing or permitting to be done any work in or about such tenement house, building, structure or lot, or from occupying or using the same for any purpose, until the entry of final judgment or order. In case any notice or order issued by said department is not complied with, said department may apply to the supreme court or to any justice thereof, for an order authorizing said department to execute and carry out the provisions of said notice or order, to remove any violation specified in said notice or order, or to abate any nuisance in or about such tenement house, building or structure, or the lot upon which it is situated. The court, or any justice thereof, is hereby authorized to make any order specified in this section. In no case shall the said department or any officer thereof or the city be liable for costs in any action or proceeding that may be commenced in pursuance of this act. In an action to establish a lien under this act the procedure shall be as set forth in sections one hundred and thirty-four and one hundred and forty-six to one hundred and fifty-one of this act. The judgment in any such action may provide for the sale of said property, and for such other remedies to secure the enforcement thereof as the court may deem proper.

**Liens; Fines; Filing Judgment With County Clerk.**

§ 129. Every fine imposed by judgment under section one hundred and twenty-six of this act upon a tenement house owner shall be a lien upon the house in relation to which the fine is imposed from the time of the filing of a certified copy of said

judgment in the office of the clerk of the county in which said tenement house is situated, subject only to taxes, assessments and water rates and to such mortgage and mechanics' liens as may exist thereon prior to such filing; and it shall be the duty of the tenement house department upon the entry of said judgment, to forthwith file the copy as aforesaid, and such copy, upon such filing, shall be forthwith indexed by the clerk in the index of mechanics' liens.

**Lis Pendens; Filing; Indexing; Cancellation.**

§ 130. In any action or proceeding instituted by the department charged with the enforcement of this act the plaintiff or petitioner may file in the county clerk's office of the county where the property affected by such action or proceeding is situated, a notice of the pendency of such action or proceeding. Said notice may be filed at the time of the commencement of the action or proceeding, or at any time afterwards before final judgment or at any time after the service of any notice or order issued by said department. Such notice shall have the same force and effect as the notice or pendency of action provided for in the code of civil procedure. Each county clerk with whom such notice is filed shall record it, and shall index it to the name of each person specified in a direction subscribed by the corporation counsel. Any such notice may be vacated upon the order of a judge or justice of the court in which such action or proceeding was instituted or is pending, or upon the consent in writing of the corporation counsel. The clerk of the county where such notice is filed is hereby directed to mark such notice and any record or docket thereof as canceled of record, upon the presentation and filing of such consent or of certified copy of such order.

TITLE II.

*Registry of Names and Service of Papers.*

**Registry of Owners' Names, Addresses, Description of Property Transfers, Devolution by Will or Descent.**

§ 131. Every owner of a tenement house and every lessee of the whole house, or other person having control of a tenement house, shall file in the department charged with the enforcement of this act, a notice containing his name and address, and also a description of the property, by street number or otherwise, as the case may be, in such manner as will enable the department charged with the enforcement of this act easily to find

the same; and also the number of apartments in each house, the number of rooms in each apartment, and the number of families occupying the apartments. In case of a transfer of any tenement house, it shall be the duty of the grantor or grantee of said tenement house to file in the department charged with the enforcement of this act a notice of such transfer, stating the name of the new owner, within thirty days after such transfer. In case of the devolution of said property by will, it shall be the duty of the executor and the devisee, if more than twenty-one years of age, and in case of the devolution of such property by inheritance without a will, it shall be the duty of the heirs, or in case all of the heirs are under age, it shall be the duty of the guardians of such heirs, and in case said heirs have no guardians, it shall be the duty of the administrator of the deceased owner of said property to file in said department a notice, stating the death of the deceased owner, and the names of those who have succeeded to his interest in said property, within thirty days after the death of the decedent, in case he died intestate, and within thirty days after the probate of his will, if he died testate.

### Registry of Agent's Name.

§ 132. Every owner, agent, or lessee of a tenement house may file in the tenement house department a notice containing the name and address of an agent of such house, for the purpose of receiving service of process, and also a description of the property by street, number or otherwise, as the case may be, in such manner as will enable the department of health easily to find the same. The name of the owner or lessee may be filed as agent for this purpose.

### Service of Notices and Orders.

§ 133. Every notice or order in relation to a tenement house shall be served five days before the time for doing the thing in relation to which it shall have been issued. The posting of a copy of such notice or order in a conspicuous place in the tenement house, together with the mailing of a copy thereof on the same day that it is posted, to each person, if any, whose name has been filed with the tenement house department in accordance with the provisions of sections one hundred and thirty-one and one hundred and thirty-two of this act, at his address as therewith filed, shall be sufficient service thereof.

**Service of Summons.**

§ 134. In any action brought to any city department in relation to a tenement house for injunction, vacation of the premises, or other abatement of nuisance, or to establish a lien thereon, it shall be sufficient service of the summons to serve the same as notices and orders are served under the provisions of the last section; provided, that if the address of any agent whose name and address have been filed in accordance with the provisions of section one hundred and thirty-two of this act is in the city in which the tenement house is situated, then a copy of the summons shall also be delivered at such address to a person of proper age, if upon reasonable application admittance can be obtained and such person found; and provided also, that personal service of the summons upon the owner of such tenement house shall be sufficient service thereof upon him.

**Indexing Names; Public Index.**

§ 135. The names and addresses filed in accordance with sections one hundred and thirty-one and one hundred and thirty-two shall be indexed under direction of the registrar of records of the tenement house department, in such a manner that all of those filed in relation to each tenement house shall be together, and readily ascertainable. The tenement house department shall provide the registrar with the necessary books and clerical assistance for that purpose, and the expense thereof shall be paid by the city. Said indexes shall be in public records, open to public inspection during business hours.

TITLE III.

*Prostitution in Tenement Houses.*

**Vagrancy; Punishment; Procedure.**

§ 141. A woman who knowingly resides in a house of prostitution or assignation of any description in a tenement house or who commits prostitution or indecently exposes her person for the purpose of prostitution in, or who solicits any man or boy to enter a house of prostitution or a room in a tenement house for the purpose of prostitution, shall be deemed a vagrant, and upon conviction thereof shall be committed to the county jail for a term not exceeding six months from the date of commitment. The procedure in such case shall be the same as that provided by law for other cases of vagrancy.

**Lien; Prostitution With Owner's Permission; Penalty.**

§ 142. A tenement house shall be subject to a penalty of one thousand dollars, if it or any part of it shall be used for the purpose of a house of prostitution or assignation of any description, with the permission of the owner thereof, or his agent, and said penalty shall be a lien upon the house and the lot upon which the house is situated.

**Permission of Lessee; Termination of Lease; Summary Proceedings.**

§ 143. If a tenement house, or any part thereof, shall be used for the purpose of a house of prostitution or assignation of any description with the permission of the lessee of the whole of said tenement house, or his agent, the lease shall be terminable at the election of the lessor. And the owner shall be entitled to recover possession of said tenement house by summary proceedings in the manner provided by title two of chapter seventeen of the code of civil procedure.

**Permission of Owner; What to Be Deemed.**

§ 144. A tenement house shall be deemed to have been used for the purpose specified in the last two sections with the permission of the owner and lessee thereof, if summary proceedings for the removal of the tenants of said tenement house, or of so much thereof as is unlawfully used, shall not have been commenced within five days after notice of such unlawful use, served by the tenement house department in the manner prescribed by law for the service of notices and orders in relation to tenement houses.

**Rules of Evidence; General Reputation; Presumption.**

§ 145. In a prosecution against an owner or agent of a tenement house under section three hundred and twenty-two of the penal code, or in an action to establish a lien under section one hundred and forty-two of this act, the general reputation of the premises in the neighborhood shall be competent evidence, but shall not be sufficient to support a judgment without corroborative evidence, and it shall be presumed that their use was with the permission of the owner and lessee; provided that such presumption may be rebutted by evidence.

**Title of Action and Parties; House as Defendant; Taxpayers' Action.**

§ 146. Said action shall be brought against the tenement house as defendant. Said house may be described in the title of the action by its street number, or in any other method sufficiently precise to secure identification. The property shall be described in the complaint. The plaintiff, except as hereinafter provided, shall be the tenement house department. In case any taxpayer of any city to which this act applies, shall request such department in writing to institute an action under this title against any tenement house specified in such request, and such department shall not institute such action within ten days after receiving such request, then any taxpayer of said city may institute and maintain such action against such tenement house in his own name, and in such case the court may in its discretion require security for costs.

**Jurisdiction and Procedure; Lis Pendens; Preference.**

§ 147. Said action shall be brought in the supreme court in the county in which the property is situated. At or before the commencement of the action the complaint shall be filed in the office of the clerk of the county, together with a notice of the pendency of the action, containing the names of the parties, the object of the action and a brief description of the property affected thereby. Said notice shall be immediately recorded by the clerk in accordance with the provisions of section sixteen hundred and seventy-two of the code of civil procedure. The owner or lessee of said building, or both, may appear in said action and answer or demur to the complaint and the subsequent proceedings in the action shall be the same as in other actions brought to establish a lien or encumbrance upon real property, and the action shall be entitled to a preference in the trial or hearing thereof.

**Judgment.**

§ 148. The judgment in such action, if in favor of the plaintiff, shall establish the penalty sued for as a lien upon said premises, subject only to taxes, assessments and water rates, and to such mortgage and mechanics' liens as may exist thereon prior to the filing of the notice of pendency of the action.

**Sale of Property; Deed; Rules of Practice.**

§ 149. At any time after the entry of any judgment establishing a lien upon tenement property the tenement house department, if there be no stay pending appeal, may apply to the court for leave to sell such property. Upon such application the court, if it deem advisable, may order such property to be sold at public auction, subject to taxes, assessments and water rates and to such mortgage and mechanics' liens as aforesaid. The deed to the purchaser shall be made by the tenement house department. The justices of the appellate division of the supreme court of any judicial department may establish rules of practice, which shall be followed by such department in the conduct of said sales in said department.

**Receivership of Rents and Profits; Counsel; Commissions; Duration.**

§ 150. Whenever the lien or liens upon a tenement property, established by judgment, shall amount to one thousand dollars or over, if there be no stay pending appeal, the tenement house department shall appoint a receiver of the rents and profits of said property. Said receiver shall give security for the performance of his duties in the manner and form fixed by said department. He shall have the powers and duties of a receiver of rents and profits of real estate appointed by the supreme court; provided, that the corporation counsel shall act as his counsel and that he shall not be allowed any expenditure for counsel fees, and provided, that his commissions shall be ten per centum of his collections, which sum shall be full compensation for his services and those of any agent or agents whom he may employ. Said receivership shall continue until the amount of said liens, with interest thereon at the rate of six per centum, and of said commissions, have been fully paid; provided, that nothing in this section shall be construed to prevent any prior lienor from applying to the court in a proper case for a receiver of the property.

**Cancellation of Notice of Pendency of the Action.**

§ 151. If an action to establish a lien upon tenement property terminate otherwise than in a judgment establishing such a lien, or if said judgment be fully paid, said notice may be cancelled in the manner prescribed by section one thousand six hundred and seventy-four of the code of civil procedure.

## CHAPTER VI.

### GENERAL PROVISIONS.

**Repeal.**

§ 161. All statutes of the state and ordinances of the city so far as inconsistent with the provisions of this act are hereby repealed; provided, that nothing in this act contained shall be construed as repealing or abrogating any present law or ordinance in any city of the first class, further restricting or prohibiting the occupation of cellars, or increasing the amount of air space to each individual occupying a room, or as prohibiting any future ordinance in respect thereto.

**Building Regulations.**

§ 162. Except as herein otherwise specified, every tenement house shall be constructed and maintained in conformity with the existing law, but no ordinance, regulation or ruling of any municipal authority shall modify or dispense with any provision of this act.

**Penalties.**

§ 163. All penalties collected under this act shall be paid into the city treasury.

**Time for Compliance.**

§ 164. All alterations hereby required upon now existing tenement houses shall be made within one year from the time when this act shall take effect, or at such earlier period as may be fixed by the departments charged with the enforcement of this act.

**When to Take Effect.**

§ 165. This act shall take effect immediately; provided, that sections one hundred and thirty-four and one hundred and forty-four shall not take effect until three months after the passage thereof.

§ 167. In the case of a tenement house hereafter erected on Riverside drive or parkway, between One Hundred and Thirty-sixth street and One Hundred and Fiftieth street, in the City

of New York, on a corner lot formed by the intersection of a street passing under said drive or parkway, the measurements for determining the height of said house and the number of its stories, may be taken on said drive or parkway; provided, however, that no part of said building which is below the curb level of said drive or parkway is occupied for living purposes, except by the janitor of said building and his family; and provided also that there shall not be more than one story below the level of said drive or parkway, and that said story shall not exceed fifteen feet in height.

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## RULES AND REGULATIONS OF THE TENEMENT HOUSE DEPARTMENT OF THE CITY OF NEW YORK.

Adopted May 18, 1906.

### Official Hours of the Department.

1. The official hours of the department are from 9 A.M. until 4 P.M., and on Saturdays from 9 A.M. to 12 M. (Sundays and legal holidays excepted). The commissioner reserves the right to extend these hours at any time.

### Politeness and General Conduct.

8. All employes must conduct themselves in a quiet and civil manner, and be polite and considerate in their intercourse with the public and with each other. Abuse, insolence or loud talking will not be tolerated. Kindly but firm and tactful treatment of the public is essential for the retention of an employe in the department. No employe must enter an apartment in the performance of his duty without knocking, and being bidden to enter.

### Other Occupation or Business.

12. Employes of the tenement house department are forbidden to follow any other gainful calling or occupation, or to be employed in any other business. Violation of the above rule is punishable by dismissal.

### Private Interests.

13. While in the service of the tenement house department no employe shall make use of or apply any portion of the time

he may be required to devote to the service of the city, otherwise than to the performance of his official duties, nor shall he use any information acquired in the performance of such duties, or any authority or power with which he may be vested as such employe, for any purpose other than the performance of his public duties.

**Recommending Devices.**

14. No employe of this department shall recommend or indorse or write letters indorsing or recommending any form of construction, mechanism, device or material.

**Access to Certain Parts of the Department.**

30. No employe, without written permission from the commissioner or the deputy commissioners, shall permit the public either before, during or after office hours to have access to those portions of the department which the public is not permitted to enter.

**Work of Department Confidential.**

33. The public business transacted by the department, and the records thereof, must be treated as confidential by all employes. Talking outside of the department in regard to the rulings, business or transactions of the department is strictly forbidden. Information secured in the line of official business must not be divulged to persons other than the officers of the department. All persons desiring information should be referred to the departmental offices. Violation of this rule will be punishable by dismissal.

**Power of Arrest.**

38. No inspector shall apply at a police court or station house, or to any policeman, for the arrest of any person, without previous consultation with the chief inspector or the commissioner or the deputy commissioners, nor without a direct order so to do from one of these officers.

**Official Badge.**

40. No inspector shall in any way cover up or conceal his badge or official hat band while on duty, and must, when required by any citizen, promptly and politely furnish his badge number and name.

### Improper Use of Official Badge.

41. No inspector shall make use of his position, or of his official badge, for the purpose of obtaining admission for himself or others to any place of amusement during the time of performance, or for obtaining tickets for the same.

### Loaning Official Badge.

42. No inspector shall loan his official badge to any person.

### Inspectors to Report Violations of Law.

44. Inspectors are required to promptly report in writing all violations of law in regard to tenement houses called to their attention or which come under their observation. All reports made by inspectors must be from personal investigation and they must be personally acquainted with the facts in each case and not rely upon information given by others. Inspectors are required to note all tenements in their districts undergoing alterations, and to promptly report such fact, describing the house by street and number, and stating how the building is occupied, and also giving a brief statement as to the general nature of the alterations and how far they have progressed.

### Complaints.

45. All complaints referred to inspectors must be examined and immediately reported on the forms provided for that purpose.

### Stopping Construction or Alteration.

47. No inspector shall stop work on the construction or alteration of any tenement house without direct orders so to do from the chief inspector, or the commissioner or the deputy commissioners. Receipt of and execution of such an order must be at once reported in writing by the inspector, accompanied by a violation stating in full the deviations from the law.

## NOTE RELATING TO THE PRESENTATION OF DRAWINGS TO THE TENEMENT HOUSE DEPARTMENT.

**Furnished by the Department.**

### Applications Must Be Filed in Triplicate and Drawings in Duplicate.

Note — In making application for the approval of plans for a new tenement house the following drawings must be furnished: Plans of all floors, including cellar, basement and roof, an elevation showing heights of stories, a section showing stairs and stair hall windows, and, if necessary, transverse and longitudinal sections. All plans must be drawn to a uniform scale, not less than one-quarter inch to the foot, and be on linen tracing cloth or be cloth prints. After approval by the tenement house department one set of plans and a certificate of approval will be at once forwarded to the bureau of buildings by the department. The dimensions and boundaries of each lot must be clearly marked on plans, as must the measurements of all courts, yards, vent shafts, rooms and halls, as well as the use to which each room and the several portions of the cellar are to be put; also the location of fire escapes. With each application must be filed a written statement signed by the owner of the proposed building, authorizing the person signing this application to make such application. There must also be filed with this application a diagram or survey of the property, on linen tracing cloth, showing the width and depth of the lot and its location and distance from adjacent streets, and the distance of the street sewer below the street level.

All amendments to plans and applications must be made on a separate blank provided for that purpose, and where changes affecting the sizes of lots, buildings, courts, rooms or halls are made, separate drawings showing such changes must be filed.

Note — Where it is proposed to convert or alter to the purposes of a tenement house a building not used for such purpose, the form of application used for the erection of a new tenement house must be filed in the department and must be completely filled out.

## RULES OF THE TENEMENT HOUSE DEPARTMENT, BUREAU OF BUILDINGS, FIRE DEPARTMENT, BOARD OF HEALTH AND STATE FACTORY INSPECTOR IN REGARD TO BAKERIES AND PLACES IN WHICH FAT IS BOILED IN TENEMENT HOUSES, AND ABSTRACT OF LABOR LAW RELATING TO BUILDINGS, FACTORIES AND LAUNDRIES.

### Ceilings.

In tenement houses hereafter erected the ceiling shall be of iron beams and fireproof filling.

In old tenement houses where there are wooden joists or beams above the bakery, such joists or beams shall be made safe by fireproof materials around the same in the following manner, or in such other manner as may be approved by the Tenement House Department:

A surface of metal lath continuous over the ceiling of the entire bakery shall be fastened directly to the underside of the joists or beams and plastered with at least one coat of plaster. Furring strips of fireproof material not less than one inch in thickness shall be fastened on the surface of the plaster, to which shall be securely fastened plaster-boards not less than one-half an inch in thickness, made of plaster and strong fiber, and covered with at least one coat of hard, smooth-finished white plaster.

There shall be an air space of at least one inch between the layer of metal and the layer of plaster-boards, and all joints shall be properly cemented and closed up.

### Walls and Partitions.

There shall be no openings either by door or window, dumb-waiter shaft or otherwise, between the battery and any other part of the tenement house. Access to the bakery can be had only from the street or yard or from a court.

In tenement houses hereafter erected all walls and partitions shall be entirely of brick, stone, terra cotta or other fireproof material, and no wooden wainscoting, sheathing or other inflammable material will be permitted.

In old buildings the side walls and partitions shall be made safe by fireproof material around the same in the manner above prescribed for ceilings in old buildings.

**Floors.**

The floors shall be of good quality cement concrete, covered with hard wood flooring or covered with tiles laid in cement.

**Height.**

The height of all bakeries shall be not less than eight feet, except that any cellar or basement less than eight feet in height which was used as a bakery on May second, 1895, need not be altered to conform to the provision with respect to height of rooms. Basements or cellars used as confectionery and ice cream manufacturing shops shall not be less than seven feet in height.

**Light and Ventilation.**

Special attention should be given to the location of the bakery with reference to its adequate lighting and ventilation. Every bakery hereafter placed in a tenement house shall be provided with one or more windows opening directly to the street or yard or upon a court of lawful size.

In such bakeries there shall also be provided a separate and independent ventilating flue, immediately adjoining and above the oven door, to which a ventilating iron hood shall be connected for the purpose of conveying from the bakery all gas, fumes, etc.

**Water Closets.**

A proper and suitable water closet must be provided for the use of persons employed in the bakeshop. All water closets hereafter placed in any tenement house for the use of bakeries shall be entirely separated from the bakery, but shall be located on the same story and of convenient access. Such water closet shall be located in a compartment entirely enclosed to the ceiling, with a window or ventilating skylight, not less than 1 foot by 3 feet in size between stop beads, opening directly on the outer air. All such water closets shall have the floor of the water closet compartment made water proof by means of asphalt, marble, tile or slate, with a six-inch water proof base of the same material extending around the compartment.

**Sinks.**

A sink with proper water service shall be provided in each bakeshop. Such sink shall be properly trapped and the waste pipe directly connected to the drainage system of the house.

No woodwork of any description shall be used in connection with such sink, nor shall it be enclosed in any manner, but shall be entirely open beneath.

### Scaffolding for Use of Employes.

A person employing or directing another to perform labor of any kind in the erection, repairing, altering or painting any structure or building must provide scaffolding, hoists, stays, ladders and other mechanical contrivances that are safe and give proper protection to the life and limb of persons employed or engaged.

Scaffolding or staging swung or suspended from an overhead support, more than twenty feet from the ground or floor, shall have a safety rail of wood, properly bolted, secured and braced, rising at least twenty-four inches above the floor or main portions of the scaffolding or staging, and extending along the entire length of the outside, and the ends thereof, and properly attached thereto, and shall be so fastened as to prevent the same from swaying from the building or structure.

All swinging and stationary scaffolding shall be so constructed as to bear four times maximum weight required to be placed thereon when in use, and not more than four men shall be allowed on any swinging scaffolding at one time.

### Protection of Persons Employed on Buildings in Cities.

All contractors and owners, when constructing buildings in cities, where the plans and specifications require floors to be arched between the beams thereof, or where the floors or filling in between the floors are of fire-proof material or brick work, shall complete the flooring or filling in as the building progresses, to not less than within three tiers of beams below that on which the iron work is being erected. If the plans and specifications of such buildings do not require filling in between the beams of floors with brick or fire-proof material all contractors for carpenter work, in the course of construction, shall lay the underflooring thereof on each story as the building progresses, to not less than within two stories below the one to which such building has been erected. Where double floors are not to be used, such contractor shall keep planked over the floor two stories below the story where the work is being performed. If the floor beams are of iron or steel the contractors for the iron and steel work of buildings in course of construction, or the owners of such buildings, shall thoroughly

plank over the entire tier of iron or steel beams on which the structural iron or steel work is being erected, except such spaces as may be reasonably required for the proper construction of such iron or steel work, and for the raising or lowering of materials to be used in the construction of such building, or such spaces as may be designated by the plans and specifications for stairways and elevator shafts. If elevators, elevating machines or hod-hoisting apparatus are used within a building in course of construction for the purpose of lifting materials to be used in such construction, the contractors or owners shall cause the shafts or openings in each floor to be enclosed or fenced in on all sides by a barrier at least eight feet in height, except on two sides, which may be used for taking off and putting on materials, and those sides shall be guarded by an adjustable barrier not less than three nor more than four feet from the floor, and not less than two feet from the edge of such shaft or opening.

If a building in course of construction is five stories or more in height, no lumber or timber needed for such construction shall be hoisted or lifted on the outside of such building. The chief officer, in any city, charged with the enforcement of the building laws of such city, and the factory inspectors are hereby charged with enforcing the provisions of this section.

The factory inspector shall enforce all the above provisions, investigate complaints, issue orders to the person or corporation complained of to comply with such provisions, and if such order is disregarded, he may call upon the district attorney to prosecute the person or corporation for the violations complained of.

### Stairs and Doors in Factories.

Proper and substantial handrails shall be provided on all stairways in factories. The steps of such stairs shall be covered with rubber, securely fastened thereon, if in the opinion of the factory inspector, the safety of the employees would be promoted thereby. The stairs shall be properly screened at the sides and bottom. All doors leading in or to any such factory shall be so constructed as to open outwardly where practicable, and shall not be locked, bolted or fastened during working hours.

### Fire Escapes of Factories.

Such fire escapes as may be deemed necessary by the factory inspector shall be provided on the outside of every factory consisting of three or more stories in height. Each escape shall

connect with each floor above the first, and shall be of sufficient strength, well fastened and secured, and shall have landings or balconies not less than six feet in length and three feet in width, guarded by iron railings, not less than three feet in height, embracing at least two windows at each story and connected with the interior by easily accessible and unobstructed openings. The balconies or landings shall be connected by iron stairs, not less than eighteen inches wide, with steps of not less than six inches tread, placed at a proper slant and protected by a well-secured hand-rail on both sides, and shall have a drop ladder not less than twelve inches wide reaching from the lower platform to the ground. The windows or doors to the landing or balcony of each fire escape shall be of sufficient size and located as far as possible, consistent with accessibility from the stairways and elevator hatchways or openings, and a ladder from such fire escape shall extend to the roof. Stationary stairs or ladders shall be provided on the inside of every factory from the upper story to the roof, as a means of escape in case of fire.

Any other plan or style of fire escape shall be sufficient if approved in writing by the factory inspector. If there is no fire escape, or the fire escape in use is not approved by the factory inspector, he may, by written order served upon the owner, proprietor, or lessee of any factory, or the agent or superintendent thereof, require one or more fire escapes to be provided therefor, at such locations and of such plan and style as shall be specified in such order. Within twenty days after the service of such order, the number of fire escapes required therein shall be provided, each of which shall be of the plan and style specified in the order, or of the plan and style described above.

### Walls and Ceilings in Factories.

The walls and ceilings of each work room in a factory shall be lime-washed or painted, when in the opinion of the factory inspector it will be conducive to the health or cleanliness of the persons working therein.

### Size of Rooms in Factories.

No more employees shall be required or permitted to work in a room in a factory between the hours of six o'clock in the morning and six o'clock in the evening than will allow to each of such employees, not less than two hundred and fifty cubic feet of air space; and, unless by a written permit of the factory inspector, not less than four hundred cubic feet for each

employe, so employed between the hours of six o'clock in the evening and six o'clock in the morning, provided such room is lighted by electricity at all times during such hours, while persons are employed therein.

### Ventilation in Factories.

The owner, agent or lessee of a factory shall provide in each workroom thereof, proper and sufficient means of ventilation; in case of failure the factory inspector shall order such ventilation to be provided. For failure to provide such ventilation within twenty days after service upon such owner, agent or lessee of such order, he shall forfeit to the people of the state ten dollars for each day after the expiration of such twenty days, to be recovered by the factory inspector in the name of his office.

### Wash-room and Water-closet.

Each factory shall contain a suitable, convenient and separate water-closet or water-closets for each sex, which shall be properly screened, ventilated; and also, a suitable and convenient wash-room. The water-closets used by women shall have separate approaches. Inside closets shall be maintained whenever practicable and in all cases when required by the commissioner of labor. When women or girls are employed, a dressing room shall be provided for them, when required by the commissioner of labor.

### Laundries.

A shop, room or building where one or more persons are employed in doing public laundry work by way of trade or for purposes of gain is a factory within the meaning of this chapter. No such public laundry work shall be done in a room used for a sleeping or living room. This section shall not apply to any female engaged in doing custom laundry work at her home for a regular family trade.

### Tenant Factories.

A tenant factory within the meaning of the term as used in this chapter is a building, separate parts of which are occupied and used by different persons, companies or corporations, and one or more of which parts is so used as to constitute in law a factory. The owner, whether or not he is also one of the occupants, instead of the prospective lessees or tenants, shall be responsible for the observance and

punishable for the non-observance of the following provisions of this article, anything in any lease to the contrary notwithstanding — namely the provisions of sections seventy-nine, eighty, eighty-two, eighty-three, eighty-six, ninety and ninety-one, and the provision of section eighty-one with respect to the lighting of halls and stairways; except that the lessees or tenants also shall be responsible for the observance and punishable for the non-observance of the provisions of sections seventy-nine and ninety-one within their respective holdings. The owner of every tenant-factory shall provide each separate factory therein with water-closets in accordance with the provisions of section eighty-eight, and with proper and sufficient water and plumbing pipes and a proper and sufficient supply of water to enable the tenant or lessee thereof to comply with all the provisions of said section. But as an alternative to providing water-closets within each factory as aforesaid, the owner may provide in the public hallways or other parts of the premises used in common, where they will be at all times readily and conveniently accessible to all persons employed on the premises not provided for in accordance with section eighty-eight, separate water-closets for each sex, of sufficient numbers to accommodate all such persons. Such owner shall keep all water-closets located as last specified at all times provided with proper fastenings, and properly screened, lighted, ventilated, clean, sanitary and free from all obscene writing or marking. Outdoor water-closets shall only be permitted where the commissioner of labor shall decide that they are necessary or preferable, and they shall then be provided in all respects in accordance with his directions. The owner of every tenant-factory shall keep the entire building well drained and the plumbing thereof in a clean and sanitary condition; and shall keep the cellar, basement, yards, areaways, vacant rooms and spaces, and all parts and places used in common in a clean, sanitary and safe condition, and shall keep such parts thereof as may reasonably be required by the commissioner of labor properly lighted at all hours or times when said building is in use for factory purposes. The term owner as used in this article shall be construed to mean the owner or owners of the freehold of the premises, or the lesse or joint lessees of the whole thereof, or his, her or their agent in charge of the property. The lessee or tenant of any part of a tenant-factory shall permit the owner, his agents and servants, to enter and remain upon the demised premises whenever and so long as may be necessary to comply with the provisions of law, the responsibility for which is by

this section placed upon the owner; and his failure or refusal so to do shall be a cause for dispossessing said tenant by summary proceedings to recover possession of real property, as provided in the code of civil procedure. And whenever by the terms of a lease any lessee or tenant shall have agreed to comply with or carry out any of such provisions, his failure or refusal so to do shall be a cause for dispossessing said tenant by summary proceedings as aforesaid. Except as in this article otherwise provided the person or persons, company or corporation conducting or operating a factory whether as owner or lessee of the whole or of a part of the building in which the same is situated or otherwise, shall be responsible for the observance and punishable for the non-observance of the provisions of this article, anything in any lease or agreement to the contrary notwithstanding.

Bakeries and confectionery establishments are factories, subject to the above provisions.

# APPENDIX II.

## THE BUILDING CODE OF THE CITY OF NEW YORK.

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# APPENDIX II.

## THE BUILDING CODE OF THE CITY OF NEW YORK.

**PROVIDING FOR ALL MATTERS CONCERNING, AFFECTING OR RELATING TO THE CONSTRUCTION, ALTERATION OR REMOVAL OF BUILDINGS OR STRUCTURES ERECTED OR TO BE ERECTED IN THE CITY OF NEW YORK, AS CONSTITUTED BY THE GREATER NEW YORK CHARTER.**

Adopted by the oBard of Aldermen, September 12, 1899. Adopted by the Council, October 10, 1899. Approved by the Mayor, October 24, 1899. With Amendments to April 12, 1906.

Be it ordained by the Municipal Assembly, pursuant to section 647 of the Greater New York charter, as follows:

### PART I.

SHORT TITLE OF THIS ORDINANCE. A REMEDIAL ORDINANCE.

**This ordinance to be known and cited as the Building Code, and presumptively contains the Building Law, except so far as such provisions are contained in the Charter.**

SECTION 1. The following provisions shall constitute and be known as the building code and may be cited as such, and presumptively provides for all matters concerning, affecting or relating to the construction, alteration or removal of buildings or structures erected or to be erected in the city of New York, as constituted by the "Greater New York charter," except so far as such provisions are contained in said charter.

**Building Code to be Construed Liberally.**

§ 2. This ordinance is hereby declared to be remedial, and is to be construed liberally, to secure the beneficial interests and purposes thereof.

## PART II.

### PRELIMINARY REQUIREMENTS.

**New Buildings and Buildings to Be Altered.**

§ 3. No wall, structure, building or part thereof, shall hereafter be built or constructed, nor shall the plumbing or drainage of any building, structure or premises, be constructed or altered, in the city of New York, except in conformity with the provisions of this code. No building already erected, or hereafter to be built, in said city, shall be raised, altered, moved or built upon in any manner, that would be in violation of any of the provisions of this code, or the approval issued thereunder.

**Filing Plans and Statements.**

§ 4. Before the erection, construction or alteration of any building or part of any building, structure, or part of any structure, or wall, or any platform, staging or flooring to be used for standing or seating purposes, and before the construction or alteration of the plumbing or drainage of any building, structure or premises is commenced, the owner or lessee, or agent of either, or the architect or builder employed by such owner or lessee in connection with the proposed erection or alteration, shall submit to the commissioner of buildings for the borough in which the premises are situated a detailed statement in triplicate of the specifications, on appropriate blanks to be furnished to applicants by the department of buildings and a full and complete copy of the plans of such proposed work, and such structural detail drawings of said proposed work as the commissioner of buildings having jurisdiction may require, all of which shall be accompanied with a statement in writing, sworn to before a notary public or commissioner of deeds, giving the full name and residence, street and number, of the owner, or of each of the owners of said building or proposed building, structure, or proposed structure, premises, wall, platform, staging or flooring. If such erection, construction or alteration, plumbing or drainage, or the alteration thereof, is proposed to be made or executed by any other person than the owner or owners of the land in fee, the person or persons intending to make such erection or alteration, or to construct such plumbing or drainage, shall accompany said detailed statement of the specifications and copy of the plans, with a statement in writing,

sworn to as aforesaid, giving the full name and residence, street and number, of the owner or owners of the land, or proposed building, structure, or proposed structure, premises, wall, platform, staging or flooring either as owner, lessee, or in any representative capacity, and that he or they are duly authorized to perform said work. Such statement may be made by the agent, or architect of the person or persons hereinbefore required to make the same. Any false swearing in a material point in any statement submitted in pursuance of the provisions of this section shall be deemed perjury, and shall be punishable as such. Said sworn statement, and detailed statement of specifications, and copy of the plans shall be kept on file in the office of the commissioner of buildings for the borough where the premises to which they relate are situated, and the erection, construction, or alteration of said building, structure, wall, platform, staging or flooring, or any part thereof, and the construction or alteration of the said plumbing or drainage, shall not be commenced or proceeded with, until said statements and plans shall have been so filed, and approved by the said commissioner of buildings, and the erection, construction or alteration of such building, structure, platform, staging or flooring, and the construction or alteration of such plumbing or drainage when proceeded with shall be constructed in accordance with such approved detailed statement of specifications and copy of plans. Nothing in this section shall be construed to prevent a commissioner of buildings from granting his approval for the erection of any part of a building, or any part of a structure, where plans and detailed statements have been presented for the same before the entire plans and detailed statements of said building or structure have been submitted. Any approval which may be issued by a commissioner of buildings pursuant to the provisions of this section, but under which no work is commenced within one year from the time of issuance, shall expire by limitation. Ordinary repairs of buildings or structures, or of the plumbing or drainage thereof, may he made without notice to the department of buildings, but such repairs shall not be construed to include the cutting away of any stone or brick wall, or any portion thereof, the removal or cutting of any beams or supports, or the removal, change or closing of any staircase, or the alteration of any house sewer or private sewer or drainage system, or the construction of any soil or waste pipe. The foregoing provisions and all the provisions of this code shall apply with equal force to buildings, both municipal and private. It shall be the duty of the commissioner of buildings having jurisdiction to approve or

reject any plan filed with him pursuant to the provisions of this section within a reasonable time.

**Demolishing Buildings.**

§ 5. When plans and detailed statements are filed in the department of buildings for the erection of a new building, if an existing building or part of an existing building is to be demolished, such fact shall be stated in the statement so filed.

In demolishing any building, story after story shall be completely removed. No material shall be placed upon the floor of any such building in the course of demolition, but the brick, timbers and other structural parts of each story shall be lowered to the ground immedately, upon displacement. The owner, architect, builder or contractor for any building, structure, premises, wall, platform, staging or flooring to be demolished shall give not less than twenty-four hours' notice to the department of buildings of such intended demolition.

## PART III.

### DEFINITIONS.

**Measurement of Height for Buildings and Walls.**

§ 6. The height of buildings shall be measured from the curb level at the center of the front of the building to the top of the highest point of the roof beams in the case of flat roofs, and for high-pitched roofs the average of the height of the gable shall be taken as the highest point of the building.

In case a wall is carried on iron or steel girders or iron or steel girders and columns, or piers of masonry, the measurements, as to height for the wall, may be taken from the top of such girder.

When the walls of a structure do not adjoin the street, then the average level for the ground adjoining the walls may be taken instead of the street curb level for the height of such structure.

**Measurement for Width of Buildings.**

§ 7. For the purpose of this code, the greatest linear dimension of any building shall be considered its length and the next greatest linear dimension its width.

**Private Dwellings, Definition of.**

§ 8. A private dwelling shall be taken to mean and include every building, which shall be intended or designed for, or used as, the home or residence of not more than two separate and distinct families or households, and in which not more than fifteen rooms shall be used for the accommodation of boarders, and no part of which structure is used as a store or for any business purpose. Two or more such dwellings may be connected on each story when used for boarding purposes, provided the halls and stairs of each house shall be left unaltered. Any such building hereafter erected shall not cover more than 90 per cent. of the lot area.

**Apartment Houses, Definition of.**

§ 9. An apartment house shall be taken and include every building, which shall be intended or designed for, or used as, the home or residence of three or more families or households, living independently of each other, and in which every such family

or household, shall have provided for it a kitchen, set bath tub and water closet, separate and apart from any other. Any such building hereafter erected shall not cover any greater percentage of a lot than is lawful to be covered by a tenement house, and the requirements for light and ventilation for a tenement house shall also apply to an apartment house.

**Hotel, Definition of.**

§ 10. A hotel shall be taken to mean and include every building, or part thereof, intended, designed or used for supplying food and shelter to residents or guests, and having a general public dining-room or a cafe, or both and containing also more than fifteen sleeping rooms above the first story. Whenever any such building hereafter erected shall be located on any other than a corner lot or plot, it shall not cover in the aggregate more than 90 per cent. of the area of such lot or plot at and above the second story floor level, if not more than five stories in height, and two and one-half per cent. less for every additional story in height; and on a corner lot, when covering an area of not more than 3,000 square feet, it shall not occupy more than 95 per cent. of the area of such lot at and above the second story level. In case any such building is to occupy a number of lots, the commissioner of buildings having jurisdiction may allow the free air space, proportioned as herein stated, to be distributed in such manner as, in his opinion, will equally as well secure light and ventilation.

**Office Buildings, Definition of.**

§ 11. An office building shall be taken to mean and include every building which shall be divided into rooms above the first story, and be intended and used for business purposes, and no part of which shall be used for living purposes, excepting only for the janitor and his family.

Office buildings when not erected on a corner, shall not cover more than 90 per cent. of the lot area, at and above the second story floor level.

**Frame Buildings, Definition of.**

§ 12. A frame building shall be taken to mean a building or structure of which the exterior walls or a portion thereof shall be constructed of wood. Buildings sheathed with boards, and partially or entirely covered with four inches of brickwork, shall be deemed to be frame buildings. Wood frames covered with metal shall be deemed to be wood structures.

## PART IV.

### QUALITY OF MATERIALS.

**Brick.**

§ 13. The brick used in all buildings shall be good, hard, well burnt brick.

When old brick are used in any wall they shall be thoroughly cleaned before being used, and shall be whole and good, hard, well burnt brick.

**Sand.**

§ 14. The sand used for mortar in all buildings shall be clean, sharp grit sand, free from loam or dirt, and shall not be finer than the standard samples kept in the office of the department of buildings.

**Lime Mortar.**

§ 15. Lime mortar shall be made of one part of lime and not more than four parts of sand. All lime used for mortar shall be thoroughly burnt, of good quality, and properly slaked before it is mixed with the sand.

**Cement Mortar.**

§ 16. Cement mortar shall be made of cement and sand in the proportion of one part of cement and not more than three parts of sand, and shall be used immediately after being mixed. The cement and sand are to be measured and thoroughly mixed before adding water.

Cement must be very finely ground and free from lumps.

Cements classed as Portland cement shall be considered to mean such cement as will, when tested neat, after one day set in air be capable of sustaining without rupture a tensile strain of at least 120 pounds per square inch, and after one day in air and six days in water be capable of sustaining without rupture a tensile strain of at least 300 pounds per square inch. Cements other than Portland cement shall be considered to mean such cement as will, when tested neat, after one day set in air be capable of sustaining without rupture a tensile strain of at least 60 pounds per square inch, and after one day in air and six days in water be capable of sustaining without rupture a tensile strain

of at least 120 pounds per square inch. Said tests are to be made under the supervision of the commissioner of buildings having jurisdiction, at such times as he may determine and a record of all cements answering the above requirements shall be kept for public information.

**Cement and Lime Mortar.**

§ 17. Cement and lime mortar mixed shall be made of one part of lime, one part of cement and not more than three parts of sand to each.

**Concrete.**

§ 18. Concrete for foundations shall be made of at least one part of cement, two parts of sand and five parts of clean broken stone, of such size so as to pass in any way through a 2-inch ring, or good, clean gravel may be used in the same proportion as broken stone. The cement, sand and stone or gravel shall be measured and mixed as is prescribed for mortar. All concrete when in place shall be properly rammed and allowed to set without being disturbed.

**Quality of Timber.**

§ 19. All timbers and wood beams used in any building shall be of good sound material free from rot, large and loose knots, shakes or any imperfection whereby the strength may be impaired, and be of such size and dimensions as the purposes for which the building is intended require.

**Tests of New Materials.**

§ 20. New structural material of whatever nature shall be subjected to such tests to determine its character and quality, as the commissioner of buildings for the borough in which the material is to be used shall direct; the tests shall be made under the supervision of said commissioner, or he may direct the architect or owner to file with him a certified copy of the results of tests, such as he may direct shall be made.

**Structure Material; Wrought Iron.**

§ 21. All wrought iron shall be uniform in character, fibrous, tough and ductile. It shall have an ultimate tensile resistance of not less than 48,000 pounds per square inch, an elastic limit of not less than 24,000 pounds per square inch, and an elongation of 20 per cent. in eight inches, when tested in small specimens.

**Steel.**

All structural steel shall have an ultimate tensile strength of from 54,000 pounds to 64,000 pounds per square inch. Its elastic limit shall be not less than 32,000 pounds per square inch, and a minimum elongation of not less than 20 per cent. in eight inches. Rivet steel shall have an ultimate strength of from 50,000 to 58,000 pounds per square inch.

**Cast Steel.**

Shall be made of open hearth steel, containing one-quarter to one-half per cent. of carbon, not over eight one-hundredths of one per cent. of phosphorus, and shall be practically free from blow-holes

**Cast Iron.**

Shall be of good foundry mixture, producing a clean, tough, gray iron. Sample bars, five feet long, one inch square, cast in sand molds, placed on supports four feet six inches apart, shall bear a central load of 450 pounds before breaking. Castings shall be free of serious blow-holes, cinder spots and cold shuts. Ultimate tensile strength shall be not less than 16,000 pounds per square inch when tested in small specimens.

## PART V.

### EXCAVATIONS AND FOUNDATIONS.

**Excavations.**

§ 22. All excavations for buildings shall be properly guarded and protected so as to prevent the same from becoming dangerous to life or limb and shall be sheath-piled where necessary to prevent the adjoining earth from caving in, by the person or persons causing the excavations to be made. Plans filed in the department of buildings shall be accompanied by a statement of the character of the soil at the level of the footings.

Whenever an excavation of either earth or rock for building or other purposes shall be intended to be, or shall be carried to the depth of more than ten feet below the curb, the person or persons causing such excavation to be made shall at all times, from the commencement until the completion thereof, if afforded the necessary license to enter upon the adjoining land, and not otherwise, at his or their own expense, preserve any adjoining or contiguous wall or walls, structure or structures from injury and support the same by proper foundations, so that the said wall or walls, structure or structures, shall be and remain practically as safe as before such excavation was commenced, whether the said adjoining or contiguous wall or walls, structure or structures, are down more or less than ten feet below the curb. If the necessary license is not accorded to the person or persons making such excavation, then it shall be the duty of the owner refusing to grant such license to make the adjoining or contiguous wall or walls, structure or structures, safe, and support the same by proper foundations so that adjoining excavations may be made, and shall be permitted to enter upon the premises where such excavation is being made for that purpose, when necessary. If such excavation shall not be intended to be, or shall not be, carried to a depth of more than ten feet below the curb, the owner or owners of such adjoining or contiguous wall or walls, structure or structures shall preserve the same from injury, and so support the same by proper foundations that it or they shall be and remain practically as safe as before such excavation was commenced, and shall be permitted to enter upon the premises where such excavation is being made for that purpose, when necessary.

In case an adjoining party wall is intended to be used by the person or persons causing the excavation to be made, and such party wall is in good condition and sufficient for the uses of the adjoining building, then and in such case the person or persons causing the excavations to be made shall, at his or their own expense, preserve such party wall from injury and support the same by proper foundations, so that said party wall shall be and remain practically as safe as before the excavation was commenced.

If the person or persons whose duty it shall be to preserve or protect any wall or walls, structure or structures from injury shall neglect or fail so to do after having had a notice of twenty-four hours from the department of buildings, then the commissioner of buildings may enter upon the premises and employ such labor, and furnish such materials, and take such steps as, in his judgment, may be necessary to make the same safe and secure, or to prevent the same from becoming unsafe or dangerous, at the expense of the person or persons whose duty it is to keep the same safe and secure. Any party doing the said work, or any part thereof, under and by direction of the said department of buildings, may bring and maintain an action against the person or persons last herein referred to, to recover the value of the work done and materials furnished, in and about the said premises, in the same manner as if he had been employed to do the said work by the said person or persons. When an excavation is made on any lot, the person or persons causing such excavation to be made shall build, at his or their own cost and expense, a retaining wall to support the adjoining earth; and such retaining wall shall be carried to the height of the adjoining earth, and be properly protected by coping. The thickness of a retaining wall at its base shall be in no case less than one-fourth of its height.

**Bearing Capacity of Soil.**

§ 23. Where no test of the sustaining power of the soil is made, different soils, exeluding mud, at the bottom of the footings, shall be deemed to safely sustain the following loads to the superficial foot, namely: Soft elay, one ton per square foot; ordinary elay and sand together, in layers, wet and springy, two tons per square foot; loam, clay or fine sand, firm and dry, three tons per square foot; very firm, coarse sand, stiff gravel or hard clay, four tons per square foot, or as otherwise determined by the commissioner of buildings having jurisdiction. Where a test is

made of the sustaining power of the soil the commissioner of buildings shall be notified so that he may be present in person or by representative. The record of the test shall be filed in the department of buildings. When a doubt arises as to the safe sustaining power of the earth upon which a building is to be erected the department of buildings may order borings to be made or direct the sustaining power of the soil to be tested by and at the expense of the owner of the proposed building.

**Pressure Under Footings of Foundations.**

§ 24. The loads exerting pressure under footings of foundations in buildings more than three (3) stories in height are to be computed as follows: For warehouses and factories they are to be full dead load and the full live load established by section 130 of this code. In stores and buildings for light manufacturing purposes they are to be the full dead load and seventy-five per cent. of the live load established by section 130 of this code.

In churches, school houses and places of public amusement or assembly, they are to be the full dead load and seventy-five per cent. of the live load established by section 130 of this code.

In office buildings, hotels, dwellings, apartment houses, tenement houses, lodging houses and stables they are to be the full dead load and sixty per cent. of the live load established by section 130 of this code.

Footings will be so designed that the loads will be as nearly uniform as possible and not in excess of the safe bearing capacity of the soil, as established by section 23 of this code.

**Foundations.**

§ 25. Every building, except buildings erected upon solid rock or buildings erected upon wharves and piers on the water front, shall have foundations of brick, stone, iron, steel or concrete laid not less than four feet below the surface of the earth, on the solid ground or level surface of rock, or upon piles or ranging timbers when solid earth or rock is not found. Piles intended to sustain a wall, pier or post shall be spaced not more than thirty-six or less than twenty inches on centers, and they shall be driven to a solid bearing, if practicable to do so, and the number of such piles shall be sufficient to support the superstructure proposed. No pile shall be used of less dimensions than five inches at the small end and ten inches at the butt for short piles, or piles twenty feet or less in length, and twelve inches at the butt for long piles, or piles more than twenty feet

in length. No pile shall be weighted with a load exceeding forty thousand pounds. When a pile is not driven to refusal, its safe sustaining power shall be determined by the following formula: Twice the weight of the hammer in tons multiplied by the height of the fall in feet divided by least penetration of pile under the last blow in inches plus one. The commissioner of buildings shall be notified of the time when such test piles will be driven, that he may be present in person or by representative. The tops of all piles shall be cut off below the lowest water line. When required, concrete shall be rammed down in the interspaces between the heads of the piles to a depth and thickness of not less than twelve inches and for one foot in width outside of the piles. Where ranging and capping timbers are laid on piles for foundations, they shall be of hard wood not less than six inches thick and properly joined together, and their tops laid below the lowest water line. Where metal is incorporated in or forms part of a foundation, it shall be thoroughly protected from rust by paint, asphaltum, concrete, or by such materials and in such manner as may be approved by the commissioner of buildings. When footings of iron or steel for columns are placed below the water level, they shall be similarly coated, or inclosed in concrete, for preservation against rust. When foundations are carried down through earth by piers of stone, brick or concrete in caissons, the loads on same shall be not more than fifteen tons to the square foot when carried down to rock; ten tons to the square foot when carried down to firm gravel or hard clay; eight tons to the square foot in open caisson or sheet pile trenches when carried down to rock. Wood piles may be used for the foundations under frame buildings built over the water or salt meadow land, in which case the piles may project above the water a sufficient height to raise the building above high tide, and the building may be placed directly thereon without other foundation.

**Foundation Walls.**

§ 26. Foundation walls shall be construed to include all walls and piers built below the curb level, or nearest tier of beams to the curb, to serve as supports for walls, piers, columns, girders, posts or beams. Foundation walls shall be built of stone, brick, Portland cement concrete, iron or steel. If built of rubble stone, or Portland cement concrete, they shall be at least eight inches thicker than the wall next above them to a depth of twelve feet below the curb level; and for every additional ten

feet, or part thereof, deeper, they shall be increased four inches in thickness. If built of brick, they shall be at least four inches thicker than the wall next above them to a depth of twelve feet below the curb level; and for every additional ten feet, or part thereof, deeper, they shall be increased four inches in thickness.

The footing or base course shall be of stone or concrete, or both, or of concrete and stepped-up brickwork, of sufficient thickness and area to safely bear the weight to be imposed thereon. If the footing or base course be of concrete, the concrete shall not be less than twelve inches thick. If of stones, the stones shall not be less than two by three feet, and at least eight inches in thickness for walls; and not less than ten inches in thickness if under piers, columns or posts; the footing or base course, whether formed of concrete or stone, shall be at least twelve inches wider than the bottom width of walls, and at least twelve inches wider on all sides than the bottom width of said piers, columns or posts. If the superimposed load is such as to cause undue transverse strain on a footing projecting twelve inches, the thickness of such footing is to be increased so as to carry the load with safety. For small structures and for small piers sustaining light loads, the commissioner of buildings having jurisdiction may, in his discretion, allow a reduction in the thickness and projection for footing or base courses herein specified. All base stones shall be well bedded and laid crosswise, edge to edge.

If stepped-up footing of brick are used in place of stone, above the concrete, the offsets, if laid in single courses, shall each not exceed one and one-half inches, or if laid in double courses, then each shall not exceed three inches, offsetting the first course of brickwork, back one-half the thickness of the concrete base, so as to properly distribute the load to be imposed thereon.

If, in place of a continuous foundation wall, isolated piers are to be built to support the superstructure, where the nature of the ground and the character of the building make it necessary, in the opinion of the commissioner of buildings having jurisdiction, inverted arches resting on a proper bed of concrete, both designed to transmit with safety the superimposed loads, shall be turned between the piers. The thrust of the outer piers shall be taken up by suitable wrought iron or steel rods and plates.

Grillage beams of wrought iron or steel resting on a proper concrete bed may be used. Such beams must be provided with separators and bolts inclosed and filled solid between with concrete, and of such sizes and so arranged as to transmit with safety the superimposed loads.

All stone walls twenty-four inches or less in thickness shall have at least one header extending through the wall in every three feet in height from the bottom of the wall, and in every three feet in length, and if over twenty-four inches in thickness, shall have one header for every six superficial feet on both sides of the wall, laid on top of each other to bond together, and running into the wall at least two feet.

All headers shall be at least twelve inches in width and eight inches in thickness, and consist of good flat stones.

No stone shall be laid in such walls in any other position than on its natural bed.

No stone shall be used that does not bond or extend into the wall at least six inches. Stones shall be firmly bedded in cement mortar and all spaces and joints thoroughly filled.

## PART VI.

### WALLS, PIERS AND PARTITIONS.

**Materials of Walls.**

§ 27. The walls of all buildings, other than frame or wood buildings, shall be constructed of stone, brick, Portland cement concrete, iron, steel or other hard, incombustible material, and the several component parts of such buildings shall be as herein provided. All buildings shall be inclosed on all sides, with independent or party walls.

**Walls and Piers.**

§ 28. In all walls of the thickness specified in this code, the same amount of materials may be used in piers or buttresses. Bearing walls shall be taken to mean those walls on which the beams, girders or trusses rest. If any horizontal section through any part of any bearing wall in any building shows more than 30 percentum area of flues and openings, the said wall shall be increased four inches in thickness for every fifteen per centum, or fraction thereof, of flue or opening area in excess of thirty per centum.

The walls and piers of all buildings shall be properly and solidly bonded together with close joints filled with mortar. They shall be built to a line and be carried up plumb and straight. The walls of each story shall be built up the full thickness to the top of the beams above. All brick laid in non-freezing weather shall be well wet before being laid. Walls or piers, or parts of walls and piers, shall not be built in freezing weather, and if frozen, shall not be built upon.

All piers shall be built of stone or good, hard, well-burnt brick, laid in cement mortar. Every pier built of brick, containing less than nine superficial feet at the base, supporting any beam, girder, arch or column on which a wall rests, or lintel spanning an opening over ten feet and supporting a wall, shall at intervals of not over thirty inches apart in height have built into it a bond stone not less than four inches thick, or a cast-iron plate of sufficient strength, and the full size of the piers. For piers fronting on a street the bond stones may conform with the kind of stone used for the trimmings of the front. Cap

stones of cut granite or blue stone, proportioned to the weight to be carried, but not less than five inches in thickness, by the full size of the pier, or cast-iron plates of equal strength by the full size of the pier, shall be set under all columns or girders, except where a four-inch bond stone is placed immediately below said cap stone, in which case the cap stone may be reduced in horizontal dimensions at the discretion of the commissioner of buildings having jurisdiction. Isolated brick piers shall not exceed in height ten times their least dimensions. Stone posts for the support of posts or columns above shall not be used in the interior of any building. Where walls or piers are built of coursed stones, with dressed level beds and vertical joints, the department of buildings shall have the right to allow such walls or piers to be built of a less thickness than specified for brickwork, but in no case shall said walls or piers be less than three-quarters of the thickness provided for brickwork.

In all brick walls every sixth course shall be a heading course, except where walls are faced with brick in running bond, in which latter case, every sixth course shall be bonded into the backing by cutting the course of the face brick and putting in diagonal headers behind the same, or by splitting the face brick in half and backing the same with a continuous row of headers. Where face brick is used of a different thickness from the brick used for backing, the courses of the exterior and interior brickwork shall be brought to a level bed at intervals of not more than ten courses in height of the face brick, and the face brick shall be properly tied to the backing by a heading course of the face brick. All bearing walls faced with brick laid in running bond shall be four inches thicker than the walls are required to be under any section of this code.

**Ashlar.**

§ 29. Stone used for the facing of any building, and known as ashlar, shall be not less than four inches thick.

Stone ashlar shall be anchored to the backing and the backing shall be of such thickness as to make the walls, independent of the ashlar, conform as to the thickness with the requirements of sections 31 and 32 of this code, unless the ashlar be at least eight inches thick and bonded into the backing, and then it may be counted as part of the thickness of the wall.

Iron ashlar plates used in imitation of stone ashlar on the face of a wall shall be backed up with the same thickness of brickwork as stone ashlar.

**Mortar for Walls and Ashlar.**

§ 30. All foundation walls, isolated piers, parapet walls and chimneys above roofs shall be laid in cement mortar, but this shall not prohibit the use in cold weather of a small proportion of lime to prevent the mortar from freezing. All other walls built of brick or stone shall be laid in lime, cement, or lime and cement mortar mixed.

The backing up of all stone ashlar shall be laid up with cement mortar, or cement and lime mortar mixed, but the back of the ashlar may be parged with lime mortar to prevent discoloration of the same.

**Walls for Dwelling-Houses.**

§ 31. The expression "walls for dwelling-houses" shall be taken to mean and include in this class walls for the following buildings:

Dwellings, asylums, apartment-houses, convents, clubhouses, dormitories, hospitals, hotels, lodging-houses, tenements, parish buildings, schools, laboratories, studios.

The walls above the basement of dwelling-houses not over three stories and basement in height, nor more than forty feet in height, and not over twenty feet in width, and not over fifty-five feet in depth, shall have side and party walls not less than eight inches thick, and front and rear walls not less than twelve inches thick. All walls of dwellings exceeding twenty feet in width and not exceeding forty feet in height, shall be not less than twelve inches thick. All walls of dwellings twenty-six feet or less in width between bearing walls which are hereafter erected or which may be altered to be used for dwellings and being over forty feet in height and not over fifty feet in height, shall be not less than twelve inches thick above the foundation wall. No wall shall be built having a twelve-inch thick portion measuring vertically more than fifty feet. If over fifty feet in height and not over sixty feet in height the wall shall be not less than sixteen inches thick in the story next above the foundation-walls and from thence not less than twelve inches to the top. If over sixty feet in height, and not over seventy-five feet in height, the walls shall be not less than sixteen inches thick above the foundation walls to the height of twenty-five feet, or to the nearest tier of beams to that height, and from thence not less than twelve inches thick to the top. If over seventy-five feet in height, and not over one hundred feet in height, the walls shall not be less than twenty inches thick above the foundation-walls

to the height of forty feet, or to the nearest tier of beams to that height, thence not less than sixteen inches thick to the height seventy-five feet, or to the nearest tier of beams to that height, and thence not less than twelve inches thick to the top. If over one hundred feet in height, and not over one hundred and twenty-five feet in height, the walls shall not be less than twenty-four inches thick above the foundation-walls to the height of forty feet or to the nearest tier of beams to that height, thence not less than twenty inches thick to the height of seventy-five feet, or to the nearest tier of beams to that height, thence not less than sixteen inches thick to the height of one hundred and ten feet, or to the nearest tier of beams to that height, and thence not less than twelve inches thick to the top. If over one hundred and twenty-five feet in height and if not over one hundred and fifty feet in height, the walls shall be not less than twenty-eight inches thick above the foundation-walls to the height of thirty feet, or to the nearest tier of beams to that height; thence not less than twenty-four inches thick to the height of sixty-five feet, or to the nearest tier of beams to that height; thence not less than twenty inches thick to the height of one hundred feet, or to the nearest tier of beams to that height; thence not less than sixteen inches thick to the height of one hundred and thirty-five feet, or to the nearest tier of beams to that height, and thence not less than twelve inches thick to the top. If over one hundred and fifty feet in height, each additional thirty feet in height or part thereof, next the foundation-walls, shall be increased four inches in thickness, the upper one hundred and fifty feet of wall remaining the same as specified for a wall of that height.

All non-fireproof dwelling-houses erected under this section, exceeding twenty-six feet in width, shall have brick fore-and-aft partition walls. All non-bearing walls of buildings hereinbefore in this section specified may be four inches less in thickness, provided, however, that none are less than twelve inches thick, except as in this code specified. Eight-inch brick partition walls may be built to support the beams in such buildings in which the distance between the main or bearing walls is not over thirty-three feet; if the distance between the main or bearing walls is over thirty-three feet the brick partition wall shall not be less than twelve inches thick; provided, that no clear span is over twenty-six feet. No wall shall be built having any one thickness measuring vertically more than fifty feet. This section shall not be construed to prevent the use of iron or steel girders, or iron or steel girders and columns, or piers of masonry,

for the support of the walls and ceilings over any room which has a clear span of more than twenty-six feet between walls, in such dwellings as are not constructed fireproof, nor to prohibit the use of iron or steel girders, or iron or steel girders and columns in place of brick walls in buildings which are to be used for dwellings when constructed fireproof. If the clear span is to be over twenty-six feet, or shall have instead of the increased four inches in thickness for every twelve and one-half feet or part thereof, that said span is over twenty-six feet, or shall have instead of the increased thickness, such piers or buttresses as, in the judgment of the commissioner of buildings having jurisdiction, may be necessary.

Whenever two or more dwelling-houses shall be constructed not over twelve feet six inches in width and not over fifty feet in height, the alternating centre wall between any two such houses shall be of brick, not less than eight inches thick above the foundation wall; and the ends of the floor beams shall be so separated that four inches of brickwork will be between the beams where they rest on the said centre wall.

**Walls for Warehouses.**

§ 32. The expression "walls for warehouses" shall be taken to mean and include in this class walls for the following buildings:

Warehouses, stores, factories, mills, printing-houses, pumping stations, refrigerating houses, slaughter-houses, wheelwright shops, cooperage shops, breweries, light and power houses, sugar refineries, office buildings, stables, markets, railroad buildings, jails, police stations, court houses, observatories, foundries, machine shops, public assembly buildings, armories, churches, theaters, libraries, museums. The walls of all warehouses, twenty-five feet or less in width between walls or bearings, shall be not less than twelve inches thick to the height of forty feet above the foundation walls. If over forty feet in height, and not over sixty feet in height, the walls shall be not less than sixteeen inches thick above the foundation walls to the height of forty feet, or to the nearest tier of beams to that height, and thence not less than twelve inches thick to the top. If over sixty feet in height, and not over seventy-five feet in height, the walls shall be not less than twenty inches thick above the foundation walls to the height of twenty-five feet, or to the nearest tier of beams to that height, and thence not less than sixteen inches thick to the top. If over seventy-five feet in height, and not over one hundred feet in height, the walls shall be not less than twenty-

four inches thick above the foundation walls to the height of forty feet, or to the nearest tier of beams to that height; thence not less than twenty inches thick to the height of seventy-five feet, or to the nearest tier of beams to that height, and thence not less than sixteen inches thick to the top. If over one hundred feet in height, and not over one hundred and twenty-five feet in height, the walls shall be not less than twenty-eight inches thick above the foundation walls to the height of forty feet, or to the nearest tier of beams to that height; thence not less than twenty-four inches thick to the height of seventy-five feet, or to the nearest tier of beams to that height; thence not less than twenty inches thick to the height of one hundred and ten feet, or to the nearest tier of beams to that height, and thence not less than sixteen inches thick to the top. If over one hundred and twenty-five feet in height, and not over one hundred and fifty feet, the walls shall be not less than thirty-two inches thick above the foundation walls to the height of thirty feet, or to the nearest tier of beams to that height; thence not less than twenty-eight inches thick to the height of sixty-five feet, or to the nearest tier of beams to that height; thence not less than twenty-four inches thick to the height of one hundred feet, or to the nearest tier of beams to that height; thence not less than twenty inches thick to the height of one hundred and thirty-five feet, or to the nearest tier of beams to that height; and thence not less than sixteen inches thick to the top. If over one hundred and fifty feet in height, each additional twenty-five feet in height, or part thereof next above the foundation walls shall be increased four inches in thickness, the upper one hundred and fifty feet of wall remaining the same as specified for a wall of that height.

If there is to be a clear span of over twenty-five feet between the bearing walls, such walls shall be four inches more in thickness than in this section specified, for every twelve and one-half feet, or fraction thereof, that said walls are more than twenty-five feet apart, or shall have instead of the increased thickness such piers or buttresses as, in the judgment of the commissioner of buildings, may be necessary.

The walls of buildings of a public character shall be not less than in this code specified for warehouses with such piers or such buttresses, or supplemental columns of iron or steel, as, in the judgment of the commissioner of buildings having jurisdiction, may be necessary to make a safe and substantial building.

In all stores, warehouses and factories over twenty-five feet

in width between walls there shall be brick partition walls, or girders supported on iron, steel or wood columns, or piers of masonry.

In all stores, warehouses or factories, in case iron, steel or wood girders, supported by iron, steel, or wood columns, or piers of masonry, are used in place of brick partition walls, the building may be seventy-five feet wide and two hundred and ten feet deep, when extending from street to street, or when otherwise located may cover an area of not more than eight thousand superficial feet. When a building fronts on three streets, it may be a hundred and five feet wide and two hundred and ten feet deep, or if a corner building fronting on two streets, it may cover an area of not more than twelve thousand five hundred superficial feet; but in no case wider nor deeper, nor to cover a greater area, except in the case of fireproof buildings. An area greater than herein stated may, considering location and purpose, be allowed by the board of buildings when the proposed building does not exceed three stories in height.

### Increased Thickness of Walls for Buildings more than One Hundred and Five Feet in Depth.

§ 33. All buildings, not excepting dwellings, that are over one hundred and five feet in depth, without a crosswall or proper piers or buttresses, shall have the side or bearing walls increased in thickness four inches more than is specified in the respective sections of this Code for the thickness of walls for every one hundred and five feet, or part thereof, that the said buildings are over one hundred and five feet in depth.

### Reduced Thickness for Interior Walls.

§ 34. In case the walls of any building are less than twenty-five feet apart, and less than forty feet in depth, or there are cross walls which intersect the walls, not more than forty feet distant, or piers or buttresses built into the walls, the interior walls may be reduced in thickness in just proportion to the number of cross walls, piers or buttresses, and their nearness to each other; provided, however, that this clause shall not apply to walls below sixty feet in height, and that no such wall shall be less than twelve inches thick at the top, and gradually increased in thickness by setoffs to the bottom. The commissioner of buildings having jurisdiction, is hereby authorized and empowered to decide (except where herein otherwise provided for) how much the walls herein mentioned may be permitted to be

reduced in thickness, according to the peculiar circumstances of each case, without endangering the strength and safety of the building.

**One-story Brick Buildings.**

§ 35. One-story structures not exceeding a height of fifteen feet may be built with eight-inch walls when the bearing walls are not more than nineteen feet apart, and the length of the eight-inch bearing walls does not exceed fifty-five feet. One-story and basement extensions may be built with eight-inch walls when not over twenty feet wide, twenty feet deep and twenty feet high to dwellings.

**Inclosure Walls for Skeleton Structures.**

§ 36. Walls of brick built in between iron or steel columns, and supported wholly or in part on iron or steel girders, shall be not less than twelve inches thick for seventy-five feet of the uppermost height thereof or to the nearest tier of beams to that measurement, in any building so constructed and every lower section of sixty feet, or to the nearest tier of beams to such vertical measurement, or part thereof, shall have a thickness of four inches more than is required for the section next above it down to the tier of beams nearest to the curb level; and thence downward, the thickness of walls shall increase in the ratio prescribed in section 26, this code.

**Curtain Walls.**

§ 37. Curtain walls built in between piers or iron or steel columns and not supported on steel or iron girders, shall be not less than twelve inches thick for sixty feet of the uppermost height thereof, or nearest tier of beams to that height and increased four inches for every additional section of sixty feet or nearest tier of beams to that height.

**Existing Party Walls.**

§ 38. Walls heretofore built for or used as party walls, whose thickness at the time of their erection was in accordance with the requirements of the then existing laws, but which are not in accordance with the requirements of this code, may be used, if in good condition, for the ordinary uses of party walls, provided the height of the same be not increased.

**Lining Existing Walls.**

§ 39. In case it is desired to increase the height of existing party or independent walls, which are less in thickness than required under this code, the same shall be done by a lining of brickwork to form a combined thickness with the old wall of not less than four inches more than the thickness required for a new wall corresponding with the total height of the wall when so increased in height. The said linings shall be supported on proper foundations and carried up to such height as the commissioner of buildings having jurisdiction may require. No lining shall be less than eight inches in thickness, and all lining shall be laid up in cement mortar and thoroughly anchored to the old brick walls with suitable wrought-iron anchors, placed two feet apart and properly fastened or driven into the old walls in rows alternating vertically and horizontally with each other, the old walls being first cleaned of plaster or other coatings where any lining is to be built against the same. No rubble wall shall be lined except after inspection and approval by the department.

**Walls of Unfinished Buildings.**

§ 40. Any building, the erection of which was commenced in accordance with specifications and plans submitted to and approved by the department of buildings prior to the passage of this code, if properly constructed, and in safe condition, may be completed, or built upon in accordance with the requirements of law, as to thickness of walls, in force at the time when such specification and plans were approved.

**Walls Tied, Anchored and Braced.**

§ 41. In no case shall any wall or walls of any building be carried up more than two stories in advance of any other wall, except by permission of the commissioner of buildings having jurisdiction, but this prohibition shall not include the inclosure walls for skeleton buildings. The front, rear, side and party walls shall be properly bonded together, or anchored to each other every six feet in their height by wrought-iron tie anchors, not less than one and a half inches by three-eighths of an inch in size, and not less than twenty-four inches in length. The side anchor shall be built into the side or party walls not less than sixteen inches, and into the front and rear walls, so as to secure the front and rear walls to the side, or party walls, when not built and bonded together. All exterior piers shall be anchored

to the beams or girders on the level of each tier. The walls and beams of every building, during the erection or alteration thereof, shall be strongly braced from the beams of each story, and when required, shall also be braced from the outside, until the building is inclosed. The roof tier of wood beams shall be safely anchored, with plank or joist, to the beams of the story below until the building is inclosed.

**Arches and Lintels.**

§ 42. Openings for doors and windows in all buildings, shall have good and sufficient arches of stone, brick, or terra-cotta, well built and keyed with good and sufficient abutments, or lintels of stone, iron or steel of sufficient strength, which shall have a bearing at each end of not less than five inches on the wall. On the inside of all openings in which lintels shall be less than the thickness of the wall to be supported, there shall be timber lintels, which shall rest at each end not more than three inches on any wall, which shall be chamfered at each end, and shall have a suitable arch turned over the timber lintel. Or the inside lintel may be of cast iron, or wrought iron, or steel, and in such case stone blocks or cast-iron plates shall not be required at the ends where the lintel rests on the walls, provided the opening is not more than six feet in width.

All masonry arches shall be capable of sustaining the weight and pressure which they are designed to carry, and the stress at any point shall not exceed the working stress for the material used, as given in section 139 of this code. Tie rods shall be used where necessary to secure stability.

**Parapet Walls.**

§ 43. All exterior and division or party walls over fifteen feet high, excepting where such walls are to be finished with cornices, gutters or crown mouldings, shall have parapet walls not less than eight inches in thickness and carried two feet above the roof, but for warehouses, factories, stores and other buildings used for commercial or manufacturing purposes the parapet walls shall be not less than twelve inches in thickness and carried three feet above the roof, and all such walls shall be coped with stone, terra-cotta or cast iron.

**Hollow Walls.**

§ 44. In all walls that are built hollow the same quantity of stone, brick or concrete shall be used in their construction

as if they were built solid, as in this code provided, and no hollow wall shall be built unless the parts of same are connected by proper ties, either of brick, stone or iron, placed not over twenty-four inches apart.

**Hollow Bricks on Inside of Walls.**

§ 45. The inside four inches of all walls may be built of hard-burnt hollow brick, properly tied and bonded into the walls, and of the dimension of ordinary bricks. Where hollow tile or porous terra-cotta blocks are used as lining or furring for walls, they shall not be included in the measurement of the thickness of such walls.

**Recesses and Chases in Walls.**

§ 46. Recesses for stairways or elevators may be left in the foundation or cellar walls of all buildings, but in no case shall the walls be of less thickness than the walls of the fourth story, unless reinforced by additional piers with iron or steel girders, or iron or steel columns and girders, securely anchored to walls on each side. Recesses for alcoves and similar purposes shall have not less than eight inches of brickwork at the back of such recesses, and such recesses shall be not more than eight feet in width, and shall be arched over or spanned with iron or steel lintels, and not carried up higher than eighteen inches below the bottom of the beams of the floor next above. No chase for water or other pipes shall be made in any pier, and in no wall more than one-third of its thickness. The chases around said pipe or pipes shall be filled up with solid masonry for the space of one foot at the top and bottom of each story. No horizontal recess or chase in any wall shall be allowed exceeding four feet in length without permission of the commissioner of buildings having jurisdiction. The aggregate area of recesses and chases in any wall shall not exceed one-fourth of the whole area of the face of the wall on any story, nor shall any such recess be made within a distance of six feet from any other recess in the same wall.

**Furred Walls.**

§ 47. In all walls furred with wood the brickwork between the ends of wood beams shall project the thickness of the furring beyond the inner face of the wall for the full depth of the beams.

**Light and Vent Shafts.**

§ 48. In every building hereafter erected or altered, all the walls or partitions forming interior light or vent shafts, shall be built of brick, or such other fireproof materials as may be approved by the commissioner of buildings having jurisdiction. The walls of all light or vent shafts, whether exterior or interior, hereafter erected, shall be carried up not less than three feet above the level of the roof, and the brick walls coped as other parapet walls. Vent shafts to light interior bath-rooms in private dwellings may be built of wood filled in solidly with brick or hard-burnt clay blocks, when extending through not more than one story in height, and carried not less than two feet above the roof, covered with a ventilating skylight of metal and glass.

**Brick and Hollow Tile Partitions.**

§ 49. Eight-inch brick and six-inch and four-inch hollow tile partitions, of hard-burnt clay, or porous terra-cotta, may be built, not exceeding in their vertical portions a measurement of fifty, thirty-six and twenty-four feet respectively, and in their horizontal measurement a length not exceeding seventy-five feet, unless strengthened by proper crosswalls, piers or buttresses, or built in iron or steel framework. All such partitions shall be carried on proper foundations, or on iron or steel girders, or on iron or steel girders and columns or piers of masonry.

**Cellar Partitions in Residence Buildings.**

§ 50. One line of fore-and-aft partitions in the cellar or lowest story, supporting stud partitions above, in all residence buildings over twenty feet between bearing walls in the cellar or lowest story, hereafter erected, shall be constructed of brick, not less than eight inches thick, or piers of brick with openings arched over below the under side of the first tier of beams, or girders of iron or steel and iron columns, or piers of masonry may be used; or if iron or steel floor beams spanning the distance between bearing walls are used of adequate strength to support the stud partitions above in addition to the floor load to be sustained by the said iron or steel beams, then the fore-and-aft brick partition, or its equivalent, may be omitted.

Stud partitions, which may be placed in the cellar or lowest story of any building, shall have good solid stone or brick foundation walls under the same, which shall be built up to the top of the floor beams or sleepers, and the sills of said partitions

shall be of locust or other suitable hard wood; but if the walls are built five inches higher of brick than the top of the floor beams or sleepers, any wooden sill may be used on which the studs shall be set.

**Main Stud Partitions.**

§ 51. In residence buildings where fore-and-aft stud partitions rest directly over each other, they shall run down between the wood floor beams and rest on the top plate of the partition below, and shall have the studding filled in solid between the uprights to the depth of the floor beams, with suitable incombustible materials.

**Timber in Walls Prohibited.**

§ 52. No timber shall be used in any wall of any building where stone, brick or iron is commonly used, except inside lintels, as herein provided, and brace blocks not more than eight inches in length.

## PART VII.

### APARTMENT HOUSES, TENEMENT HOUSES AND DWELLINGS OF CERTAIN HEIGHTS.

**Apartment Houses, Tenement Houses and Dwellings of Certain Heights.**

§ 53. Every non-fireproof building hereafter erected or altered for an apartment house or tenement house, five stories in height, or having a basement and four stories in height above a cellar, to be occupied by one or more families on any floor above the first shall have the first floor above the cellar or lowest story constructed fireproof in such manner as required in section 106 of this code. When any such non-fireproof building, exceeding five stories in height or having a basement and five stories in height above a cellar, has a store on the first story, the entire second story floor shall also be constructed fireproof. No non-fireproof apartment house, tenement house or dwelling house shall be hereafter erected more than six stories in height, nor exceed a height of seventy-five feet, unless such building has both the first and second story floors constructed fireproof, and then the height shall be not more than seven stories nor exceed eighty-five feet in height. Fireproof apartment houses or tenement houses, if constructed entirely in accordance with the requirements of section 105 of this code, for fireproof construction, may be erected to a height not to exceed one hundred and fifty feet, but not more than twelve stories in height upon all streets and avenues exceeding seventy-nine feet in width, and one hundred and twenty-five feet, but not more than ten stories in height upon all streets and avenues not exceeding seventy-nine feet in width, but any such building when erected one hundred feet in height shall be not less than forty feet in width. If any such building shall have a frontage exceeding forty feet and exceeds eighty-five feet in height, it shall have at least two separate fireproof stairways accessible from each apartment, leading from the ground floor to the roof, one of which shall be remote from elevator shafts.

The stairs from the cellar or lowest story to the fireproof floor next above, when placed within any such building, shall be located, when practicable, to the rear of the staircase leading from the first story to the upper stories and be inclosed with

brick or stone walls, and such stairways shall be provided with self-closing fireproof doors at the top and bottom of said flight of stairs. When such stairway is placed underneath the first story staircase, it shall be constructed fireproof and be roofed over with fireproof material, and be also inclosed with brick walls, with self-closing fireproof doors at the top and bottom of said flight of stairs.

When the stairs from the first story to the cellar or lowest story are located in an open side court the door leading thereto from the first story may be placed underneath the staircase in the first story, and the strings and railings of such outside stairs shall be of iron, and if the stairs be inclosed from the weather incombustible material only shall be used for that purpose. No closet shall be constructed underneath the first story staircase, but the space thereunder shall be left entirely open and kept free from incumbrance, but this shall not prohibit the inclosing without openings the under portions of the staircase from the foot of the same to a point where the height from the floor line to the soffit of the staircase shall not exceed five feet.

All non-fireproof apartment houses and tenement houses exceeding five stories in height, or having a basement and five stories in height above a cellar, shall be constructed as in this section before described, and shall also have the halls and stairs inclosed with twelve-inch brick walls. Eight-inch brick walls not exceeding fifty feet in their vertical measurement, may inclose said halls and stairs, and be used as bearing walls where the distance between the outside bearing walls does not exceed thirty-three feet, and the area between the said brick inclosure walls does not exceed one hundred and eighty superficial feet. The floors, stairs and ceilings in said halls and stairways shall be made of iron, steel, brick, stone, tile, cement, or other hard incombustible materials, excepting that the flooring and sleepers underneath the same may be of wood and the hand-rails of the stairs may be of hard wood, and the treads may be of oak not less than one and five-eighths of an inch in thickness, provided that where such wooden treads are used the under side of the stairs shall be entirely lathed with iron or wire lath, and plastered thereon, or covered with metal. At least one flight of such stairs in each of said buildings shall extend to the roof, and be inclosed in a bulkhead built of fireproof materials. The said halls and stairways shall have a connecting fireproof hallway inclosed with suitable walls of brick or such other fireproof materials, including the ceiling in all cases, as may be approved by the commissioner of buildings having jurisdiction, in the first story and extend to the street.

## PART VIII.

### VAULTS, AREAS AND CELLARS.

**Cellars to Be Connected with Sewers.**

§ 54. Before the walls of buildings are carried up above the foundation walls the cellar shall be connected with the street sewers. Should there be no sewer in the street, or if the cellars are below water level, or below the sewer level, then provision shall be made by the owner to prevent water accumulating in the cellars to the injury of the foundations.

**Vaults Under Sidewalks.**

§ 55. In buildings where the space under the sidewalk is utilized, a sufficient stone or brick wall, or brick arches between iron or steel beams, shall be built to retain the roadway of the street, and the side, end or party walls of such buildings shall extend under the sidewalk, of sufficient thickness, to such a wall. Roofs of all vaults shall be of incombustible material. Openings in the roofs of vaults for the admission of coal or light, or for manholes, or for any other purposes, if placed outside the area line, shall be covered with glass set in iron frames, each glass to measure not more than sixteen square inches, or with iron covers having a rough surface, and rabbeted flush with the sidewalks. When any such cover is placed in any sidewalk, it shall be placed as near as practicable to the outside line of the curb. All vaults shall be thoroughly ventilated.

**Areas.**

§ 56. All areas shall be properly protected with suitable railings, or covered over.

When areas are covered over, iron, or iron and glass combined, stone or other incombustible materials shall be used, and supported on brick or stone walls, or on iron or steel beams.

**Cellar Floors.**

§ 57. The floor of the cellar or lowest story in every dwelling house, apartment house, tenement house, lodging house, hotel, workshop, factory, school, church, hospital and asylum hereafter erected, shall be concreted not less than four inches thick.

Where wood floors are to be laid in such cellars or lowest stories, the sleepers shall be placed on top of the concrete.

**Cellar Ceilings.**

§ 58. The ceiling over every cellar or lowest floor in every residence building more than four stories in height, hereafter erected, when the beams are of wood, shall be lathed with iron or wire lath and plastered thereon with two coats of brown mortar of good materials, or such other fireproof covering as may be approved by the commissioner of buildings having jurisdiction.

## PART IX.

### WOOD BEAMS, GIRDERS AND COLUMNS.

**Wood Beams.**

§ 59. All wood beams and other timbers in the party wall of every building built of stone, brick or iron, shall be separated from the beam or timber entering in the opposite side of the wall by at least four inches of solid mason work. No wood floor beams or wood roof beams used in any building, hereafter erected, shall be of a less thickness than three inches. All wood trimmer and header beams shall be proportioned to carry with safety the loads they are intended to sustain. Every wood header or trimmer more than four feet long, used in any building, shall be hung in stirrup-irons of suitable thickness for the size of the timbers. Every wood beam, except header and tail beams, shall rest at one end four inches in the wall, or upon a girder as authorized by this code. The ends of all wood floor and roof beams, where they rest on brick walls, shall be cut to a bevel of three inches on their depth. In no case shall either end of a floor or roof beam be supported on stud partitions, except in frame buildings. All wood floor and wood roof beams shall be properly bridged with cross bridging, and the distance between bridging or between bridging and walls shall not exceed eight feet. All wood beams shall be trimmed away from all flues and chimneys, whether the same be a smoke, air or any other flue or chimney. The trimmer beam shall not be less than eight inches from the inside face of a flue and four inches from the outside of a chimney breast, and the header beam not less than two inches from the outside face of the brick or stone work of the same; except that for the smoke flues of boilers and furnaces where the brickwork is required to be eight inches in thickness the trimmer beam shall be not less than twelve inches from the inside of the flue. The header beam, carring the tail beams of a door, and supporting the trimmer arch in front of a fireplace, shall be not less than twenty inches from the chimney breast. The safe carrying capacity of wood beams for uniformly distributed loads shall be determined by multiplying the area in square inches by its depth in inches and dividing this product by the span of the beam in feet. This result is to be multiplied by seventy for hemlock, ninety for spruce and white

pine, one hundred and twenty for oak, and by one hundred and forty for yellow pine. The safe carrying capacity of short span timber beams shall be determined by their resistance to shear in accordance with the unit stresses fixed by section 139 of this code.

### Anchors and Straps for Wood Beams and Girders.

§ 60. Each tier of beams shall be anchored to the side, front, rear or party walls at intervals of not more than six feet apart, with good, strong wrought iron anchors of not less than one and a half inches by three-eighths of an inch in size, well fastened to the side of the beams by two or more nails made of wrought iron at least one-fourth of an inch in diameter. Where the beams are supported by girders, the girders shall be anchored to the walls and fastened to each other by suitable iron straps. The ends of wood beams resting upon girders shall be butted together end to end and strapped by wrought iron straps of the same size and distance apart, and in the same beam as the wall anchors, and shall be fastened in the same manner as said wall anchors.

Or they may lap each other at least twelve inches and be well spiked or bolted together where lapped.

Each tier of beams front and rear, opposite each pier, shall have hard wood anchor strips dovetailed into the beams diagonally, which strips shall cover at least four beams and be one inch thick and four inches wide, but no such anchor strips shall be let in within four feet of the center line of the beams; or wood strips may be nailed on the top of the beams and kept in place until the floors are being laid. Every pier and wall, front or rear, shall be well anchored to the beams of each story, with the same size anchors as are required for side walls, which anchors shall hook over the fourth beam.

### Wood Columns and Plates.

§ 61. All timber columns shall be squared at the ends perpendicular to their axis.

To prevent the unit stresses from exceeding those fixed in this code, timber or iron cap and base plates shall be provided.

Additional iron cheek plates shall be placed between the cap and base plates and bolted to the girders when required to transmit the loads with safety.

**Timber for Trusses.**

§ 62. When compression members of trusses are of timber they shall be strained in the direction of the fibre only. When timber is strained in tension, it shall be strained in the direction of the fibre only. The working stress in timber struts of pin-connected trusses shall not exceed seventy-five per cent. of the working stresses established in section 139, this code.

**Bolts and Washers for Timber Work.**

§ 63. All bolts used in connection with timber and wood beam work shall be provided with washers of such proportions as will reduce the compression on the wood at the face of the washer to that allowed in section 139, this code, supposing the bolt to be strained to its limit.

## PART X.

### CHIMNEYS, FLUES, FIREPLACES AND HEATING PIPES.

**Trimmer Arches.**

§ 64. All fireplaces and chimney breasts where mantels are placed, whether intended for ordinary fireplace uses or not, shall have trimmer arches to support hearths, and the said arches shall be at least twenty inches in width, measured from the face of the chimney breast, and they shall be constructed of brick, stone or burnt clay. The length of a trimmer arch shall be not less than the width of the chimney breast. Wood centres under trimmer arches shall be removed before plastering the ceiling underneath. If a heater is placed in a fireplace, then the hearth shall be the full width of the heater. All fireplaces in which heaters are placed shall have incombustible mantels. No wood mantel or other woodwork shall be exposed back of a summer piece; the ironwork of the summer piece shall be placed against the back or stonework of the fireplace. No fireplace shall be closed with a wood fireboard.

**Chimneys, Flues and Fireplaces.**

§ 65. All fireplaces and chimneys in stone or brick walls in any building hereafter erected, except as herein otherwise provided, and any chimney, or flue hereafter altered or repaired, without reference to the purpose for which they may be used, shall have the joints struck smooth on the inside, except when lined on the inside with pipe. No parging mortar shall be used on the inside of any fireplace, chimney or flue. The firebacks of all fireplaces hereafter erected shall be not less than eight inches in thickness, of solid masonry. When a grate is set in a fireplace, a lining of firebrick at least two inches in thickness shall be added to the fireback, unless soapstone, tile or cast iron is used, and filled solidly behind with fireproof material. The stone or brickwork of the smoke flues of all boilers, furnaces, bakers' ovens, large cooking ranges, large laundry stoves, and all flues used for a similar purpose shall be at least eight inches in thickness, and shall be capped with terra-cotta, stone or cast iron.

The inside four inches of all boiler flues shall be fire brick, laid in fire mortar, for a distance of twenty-five feet in any

direction from the source of heat. All smoke flues of smelting furnaces or of steam boilers, or other apparatus which heat the flues to a high temperature, shall be built with double walls of suitable thickness for the temperature with an air space between the walls, the inside four inches of the flues to be of fire brick. All smoke flues shall extend at least three feet above a flat roof, and at least two feet above a peak roof.

On dwelling houses and stables, three stories or less in height, not less than six of the top courses of a chimney may be laid in pure cement mortar and the brickwork carefully bonded and anchored together in lieu of coping.

In all buildings hereafter erected every smoke flue, except the flues hereinbefore mentioned, shall be lined on the inside with cast iron or well-burnt clay, or terra-cotta pipe, made smooth on the inside, from the bottom of the flue, or from the throat of the fireplace, if the flue starts from the latter, and carried up continuously to the extreme height of the flue. The ends of all such lining pipes shall be made to fit close together, and the pipe shall be built in as the the flue or flues are carried up. Each smoke pipe shall be inclosed on all sides with not less than four inches of brickwork properly bonded together.

All flues in every building shall be properly cleaned and all rubbish removed, and the flues left smooth on the inside upon the completion of the building.

**Chimney Supports.**

§ 66. No chimney shall be started or built upon any floor or beam of wood.

In no case shall a chimney be corbeled out more than eight inches from the wall, and in all such cases the corbeling shall consist of at least five courses of brick, but no corbeling more than four inches shall be allowed in eight-inch brick walls. Where chimneys are supported by piers, the piers shall start from the foundation on the same line with the chimney breast, and shall be not less than twelve inches on the face, properly bonded into the walls. When a chimney is to be cut off below, in whole or in part, it shall be wholly supported by stone, brick, iron or steel. All chimneys which shall be dangerous in any manner whatever, shall be repaired and made safe, or taken down.

**Chimneys of Cupolas.**

§ 67. Iron cupola chimneys of foundaries shall extend at least ten feet above the highest point of any roof within a radius of fifty feet of such cupola, and be covered on top with a heavy wire netting. No woodwork shall be placed within two feet of the cupola.

**Hot Air Flues, Pipes and Vent Ducts.**

§ 68. All stone or brick hot air flues and shafts shall be lined with tin, galvanized iron or burnt-clay pipes. No wood casing, furring or lath shall be placed against or cover any smoke flue or metal pipe used to convey hot air or steam. No smoke pipe shall pass through any wood floor. No stove pipe shall be placed nearer than nine inches to any lath and plaster or board partition, ceiling or any woodwork. Smoke pipes of laundry stoves, large cooking ranges and of furnaces shall be not less than fifteen inches from any woodwork, unless they are properly guarded by metal shields; if so guarded, stovepipes shall be not less than six inches distant, smokepipes of laundry stoves, large cooking ranges and of furnaces shall be not less than nine inches distant from any woodwork. Where smoke pipes pass through a lath and plaster partition they shall be guarded by galvanized iron ventilated thimbles at least twelve inches larger in diameter than the pipes, or by galvanized iron thimbles built in at least eight inches of brickwork. No smoke pipe shall pass through the roof of any building unless a special permit be first obtained from the building department for the same. If a permit is so granted, then the roof through which the smoke pipe passes shall be protected in the following manner: A galvanized iron ventilated thimble of the following dimensions shall be placed; in case of a stovepipe, the diameter of the outside guard shall be not less than twelve inches and the diameter of the inner one, eight inches, and for all furnaces, or where similar large hot fires are used, the diameter of the outside guard shall be not less than eighteen inches and the diameter of the inner one, twelve inches. The smoke pipe thimbles shall extend from the under side of the ceiling or roof beams to at least nine inches above the roof, and they shall have openings for ventilation at the lower end where the smoke pipes enter, also at the top of the guards above the roof. Where a smoke pipe of a boiler passes through a roof, the same shall be guarded by a ventilated thimble, same as before specified, thirty-six inches larger than the diameter of the smoke pipe of the boiler. Tin

or other metal pipes in brick or stone walls, used or intended to be used to convey heated air, shall be covered with brick or stone at least four inches in thickness. Woodwork near hot-air pipes shall be guarded in the following manner: A hot-air pipe shall be placed inside another pipe, one inch larger in diameter, or a metal shield shall be placed not less than one-half inch from the hot-air pipe; the outside pipe or the metal shield shall remain one and a half inches away from the woodwork, and the latter must be tin lined, or in lieu of the above protection, four inches of brickwork may be placed between the hot-air pipe and the woodwork. This shall not prevent the placing of woodwork on such metal lath or plaster, provided the distance is not less than seven-eighths of an inch. No vertical hot-air pipe shall be placed in a stud partition, or in a wood inclosure, unless it be at least eight feet distant in a horizontal direction from the furnace. Hot-air pipes in closets shall be double, with a space of one inch between them. Horizontal hot-air pipes shall be placed six inches below the floor beams or ceiling; if the floor beams or ceiling are plastered and protected by a metal shield, then the distance shall be not less than three inches.

Vent flues or ducts for the removal of foul or vitiated air in which the temperature of the air cannot exceed that of the rooms, may be constructed of iron, or other incombustible material, and shall not be placed nearer than one inch to any woodwork, and no such pipe shall be used for any other purpose.

In the support of construction of such ducts, if placed in a public school room, no wood furring or other inflammable material shall be nearer than two inches to said flues or ducts, and shall be covered on all sides other than those resting against brick, terra-cotta, or other incombustible material, with metal lath plastering with at least two heavy coats of mortar, and having at least one-half inch air space between the flues or ducts and the lath and plaster.

**Steam and Hot Water Heating Pipes.**

§ 69. Steam or hot water heating pipes shall not be placed within two inches of any timber or woodwork, unless the timber or woodwork is protected by a metal shield; then the distance shall be not less than one inch. All steam or hot water heating pipes passing through floors and ceilings or lath and plastered partitions shall be protected by a metal tube one inch larger in diameter than the pipe, having a metal cap at the floor, and where they are run in a horizontal direction between a floor

and ceiling, a metal shield shall be placed on the under side of the floor over them, and on the sides of wood beams running parallel with said pipe.

All wood boxes or casings inclosing steam or hot water heating pipes and all wood covers to recesses in walls in which steam or hot water heating pipes are placed, shall be lined with metal.

All pipes or ducts used to convey air warmed by steam or hot water shall be of metal or other fireproof material. All steam and hot water pipe coverings shall consist of fireproof materials only.

## PART XI.

### GENERAL CONSTRUCTION.

**Ducts for Pipes.**

§ 70. All ducts for pipes, wires, and other similar purposes shall be inclosed on all sides with fireproof material, and the opening through each floor shall be properly fire-stopped.

**Studded-off Spaces.**

§ 71. Where walls are studded-off the space between the inside face of the wall and the studding shall be fire-stopped with fireproof material placed on the under side of the wood beams above for a depth of not less than four inches, and be securely supported; or the beams directly over the studded-off space shall be deafened with not less than four inches of fireproof material, which may be laid on boards cut in between the beams.

**Wainscoting.**

§ 72. When wainscoting is used, in any building hereafter erected, the surface of the wall or partition behind such wainscoting shall be plastered flush with the grounds and down to the floor line.

**Bay, Oriel and Show Windows.**

§ 73. Bay windows, oriel windows and show windows on the street front on side of any building may project not more than one foot beyond the building line and shall be constructed of such materials and in such manner as will meet with the approval of the department of buildings.

Any such window that does not extend more than three feet above the second story floor of any dwelling-house may be built of wood covered with metal.

## PART XII.

### STAIRS AND ENTRANCE.

**Entrance to Basement.**

§ 74. Every dwelling-house arranged for or occupied by two or more families above the first story, hereafter erected, shall be provided with an entrance to the basement thereof from the outside of such building.

**Stairs, Number Regulated by Area of Building.**

§ 75. In any building hereafter erected to be used as a store, factory, hotel or lodging-house, covering a lot area exceeding two thousand five hundred feet and not exceeding five thousand feet, there shall be provided at least two continuous lines of stairs remote from each other; and every such building shall have at least one continuous line of stairs for each five thousand feet of lot area covered, or part thereof, in excess of that required for five thousand feet of area. When any such building covers an area of lot greater than fifteen thousand feet the number of stairs shall be increased proportionately, or as will meet the approval of the commissioner of buildings having jurisdiction.

**Engineers' Stationary Ladders.**

§ 76. Every building in which boilers or machinery are placed in the cellar or lowest story, shall have stationary iron ladders or stairs from such story leading direct to a manhole above on the sidewalk, or other outside exit.

**Slate and Stone Treads of Stairs to Be Supported.**

§ 77. In all buildings hereafter erected more than seven stories in height where the treads and landings of iron stairs are of slate, marble or other stone, they shall each be supported directly underneath, for their entire length and width, by an iron plate made solid or having openings not exceeding four inches square in same, of adequate strength and securely fastened to the strings. In case such supporting plates be made solid the treads may be of oak, not less than one and five-eighths inches thick.

## PART XIII.

### SKYLIGHTS AND FLOOR-LIGHTS.

**Metal Skylights.**

§ 78. All skylights having a superficial area of more than nine square feet, placed in any building, shall have the sashes and frames thereof constructed of iron and glass. Every fireproof roof hereafter placed on any building, shall have, beside the usual scuttle or bulkhead, a skylight or skylights of a superficial area equal to not less than one-fiftieth the superficial area of such fireproof roof. Skylights hereafter placed in public buildings, over any passageway or room of public resort, shall have immediately underneath the glass thereof a wire netting, unless the glass contains a wire netting within itself.

**Floor-Lights.**

§ 79. Floor-lights, used for transmission of light to floors below, shall be constructed of metal frames and bars or plates, and if any glass in same measures more than sixteen square inches, the glass shall be provided with a mesh of wire either in the glass or under the same, and the floor-lights shall be of the same proportional strength as the floors in which they are placed.

## PART XIV.

### INCLOSURE AND SHED COVERINGS FOR THE PROTECTION OF PEDESTRIANS.

**Inclosure and Shed Coverings for the Protection of Pedestrians.**

§ 80. Whenever buildings shall be erected or increased to over sixty-five feet in height, upon or along any street, the owner, builder or contractor constructing or repairing such buildings, shall have erected and maintained during such construction or repair, a shed over the sidewalk in front of said premises, extending from building line to curb, the same to be properly, strongly and tightly constructed, so as to protect pedestrians and others using such streets. Whenever outside scaffolds are required to carry on the construction of buildings over eighty-five feet in height, whether the same be constructed by poles or thrust-out scaffold, there shall be erected on its outer edge and ends an inclosure of wire netting of not over two-inch mesh, or of boards not less than three-fourths of an inch thick, placed not over one and one-half inches apart, well secured to uprights not less than two inches by four inches, fastened to planks or timbers, and resting on put-logs or thrust outs. The said inclosure shall be carried up at least five feet in advance above the level on which the workmen employed on said front are working. The said thrust-outs shall be not less than three by ten of spruce or yellow pine, and to be doubled or tripled, as may be required for the load to be carried, and to be thoroughly braced and secured; or said timbers can be in one stick if proportioned to the load. The flooring on thrust-outs and put-logs shall be tightly constructed with plank. This said floor and inclosure shall not be removed until a like floor and inclosure is already prepared and in position on the story above. In all buildings over eighty-five feet in height, during construction or alteration the windows on each floor above the second shall be properly inclosed as soon as the story is built. If the walls of such buildings are carried up two stories or more above the roofs of adjoining buildings, proper means shall be provided and used for the protection of skylights and roofs of such adjoining buildings. The protection over skylights shall be of stout wire netting not over three-fourths-inch mesh on stout timbers and

properly secured. All such sheds and inclosures are to be subject to the inspection of the department of buildings. Should said adjoining owner, tenant or lessee refuse to grant permission to have said roofs and skylights so protected, such refusal by said owner, tenant or lessee shall relieve the owner of the building in course of construction from any responsibility for damage done to persons or property on or within the premises affected. Should such inclosure or protection not be so erected, the commissioner of buildings having jurisdiction, shall cause a notice to be served personally upon the owner, or his authorized agent, constructing or repairing such buildings, or the owner, tenants or lessee of adjoining premises, requiring such inclosure or protection, as provided in this section, specifying the manner in which same shall be erected; and if such inclosures or protections are not erected, strengthened or modified as provided in such notice within three days after the service thereof, the said commissioner of buildings having jurisdiction, shall have full power and authority to cause such inclosure to be erected on the fronts and roofs and the skylights protected, and all expenses connected with same may become a lien on the property in interest so inclosed and protected, and which lien may be created and enforced in the same manner as now provided for in section 156 of this code.

## PART XV.

### MISCELLANEOUS BUILDINGS.

**Grain Elevators.**

§ 81. Nothing in this code shall be so construed as to apply to or prevent the erection of what are known as grain elevators, as usually constructed, provided they are erected on tidewater, or adjacent to the river front in said city, in isolated localities, under such conditions as the department of buildings may prescribe, including location.

**Exhibition Buildings.**

§ 82. Buildings for fair and exhibition purposes, towers for observation purposes and structures for similar uses, whether temporary or permanent in character, shall be constructed in such manner and under such conditions as the board of buildings may prescribe.

**Smokehouses.**

§ 83. All smokehouses shall be of fireproof construction, with brick walls, iron doors and brick or metal roofs. An iron guard shall be placed over and three feet above the fire, and the hanging rails shall be of iron. The walls of all smokehouses shall be built up at least three feet higher than the roof of the building in which they are located.

## PART XVI.

HEATING APPARATUS, DRYING ROOMS, GAS AND WATER PIPES.

### Heating Furnaces and Boilers.

§ 84. A brick-set boiler shall not be placed on any wood or combustible floor or beams. Wood or combustible floors and beams under and not less than three feet in front and one foot on the sides of all portable boilers shall be protected by a suitable brick foundation of not less than two courses of brick well laid in mortar on sheet iron; the said sheet iron shall extend at least twenty-four inches outside of the foundation at the sides and front. Bearing lines of bricks, laid on the flat, with air spaces between them, shall be placed on the foundation to support a cast-iron ash pan of suitable thickness, on which the base of the boiler shall be placed, and shall have a flange, turned up in the front and on the sides, four inches high; said pan shall be in width not less than the base of the boiler and shall extend at least two feet in front of it. If a boiler is supported on a cast-iron base with a bottom of the required thickness for an ash pan, and is placed on bearing lines of brick in the same manner as specified for an ash pan, then an ash pan shall be placed in front of the said base and shall not be required to extend under it. All lath and plaster and wood ceilings and beams over and to a distance of not less than four feet in front of all boilers shall be shielded with metal. The distance from the top of the boiler to said shield shall be not less than twelve inches. No combustible partition shall be within four feet of the sides and back and six feet from the front of any boiler, unless said partition shall be covered with metal to the height of at least three feet above the floor, and shall extend from the end or back of the boiler to at least five feet in front of it; then the distance shall be not less than two feet from the sides and five feet from the front of the boiler. All brick hot-air furnaces shall have two covers, with an air space of at least four inches between them; the inner cover of the hot-air chamber shall be either a brick arch or two courses of brick laid on galvanized iron or tin, supported on iron bars; the outside cover, which is the top of the furnace, shall be made of brick or metal supported on iron bars, and so constructed as to be perfectly tight, and shall be not less than four inches below any combus-

tible ceiling or floor beams. The walls of the furnace shall be built hollow in the following manner: One inner and one outer wall, each four inches in thickness, properly banded together with an air space of not less than three inches between them. Furnaces must be built at least four inches from all woodwork. The cold-air boxes of all hot-air furnaces shall be made of metal, brick or other incombustible material, for a distance of at least ten feet from the furnace. All portable hot-air furnaces shall be placed at least two feet from any wood or combustible partition or ceiling, unless the partitions and ceilings are properly protected by a metal shield, when the distance shall be not less than one foot. Wood floors under all portable furnaces shall be protected by two courses of brickwork well laid in mortar on sheet iron. Said brickwork shall extend at least two feet beyond the furnace in front of the ash pan.

**Registers.**

§ 85. Registers located over a brick furnace shall be supported by a brick shaft built up from the cover of the hot-air chamber; said shaft shall be lined with a metal pipe, and all wood beams shall be trimmed away not less than four inches from it. Where a register is placed on any woodwork in connection with a metal pipe or duct, the end of the said pipe or duct shall be flanged over on the woodwork under it. All registers for hot-air furnaces placed in any woodwork or combustible floors shall have stone or iron borders firmly set in plaster of paris or gauged mortar. All register boxes shall be made of tin plate or galvanized iron with a flange on the top to fit the groove in the frame, the register to rest upon the same; there shall be an open space of two inches on all sides of the register box, extending from the under side of the border to and through the ceiling below. The said opening shall be fitted with a tight tin or galvanized iron casing the upper end of which shall be turned under the frame. When a register box is placed in the floor over a portable furnace, the open space on all sides of the register box shall be not less than three inches. When only one register is connected with a furnace said register shall have no valve.

**Drying Rooms.**

§ 86. All walls, ceilings, and partitions inclosing drying rooms, when not made of fireproof material, shall be wire lathed and plastered, or covered with metal, tile or other hard incombustible material.

**Ranges and Stoves.**

§ 87. Where a kitchen range is placed from twelve to six inches from a wood stud partition, the said partition shall be shielded with metal from the floor to the height of not less than three feet higher than the range; if the range is within six inches of the partition, then the studs shall be cut away and framed three feet higher and one foot wider than the range, and filled in to the face of the said stud partition with brick or fireproof blocks, and plastered thereon. All ranges on wood or combustible floors and beams that are not supported on legs and have ash pans three inches or more above their base, shall be set on suitable brick foundations consisting of not less than two courses of brick well laid in mortar on sheet iron, except small ranges such as are used in apartment houses that have ash pans three inches or more above their base, which shall be placed on at least one course of brickwork on sheet iron or cement. No range shall be placed against a furred wall. All lath and plaster or wood ceilings over all large ranges and ranges in hotels and restaurants, shall be guarded by metal hood; placed at least nine inches below the ceiling. A ventilating pipe connected with a hood over a range shall be at least nine inches from all lath and plaster or woodwork and shielded. If the pipe is less than nine inches from lath and plaster and woodwork, then the pipe shall be covered with one inch of asbestos plaster on wire mesh. No ventilating pipe connected with a hood over a range shall pass through any floor. Laundry stoves on wood or combustible floors shall have a course of bricks, laid on metal, on the floor under and extended twenty-four inches on all sides of them. All stoves for heating purposes shall be properly supported on iron legs resting on the floor three feet from all lath and plaster or woodwork; if the lath and plaster or woodwork is properly protected by a metal shield, then the distance shall be not less than eighteen inches. A metal shield shall be placed under and twelve inches in front of the ash pan of all stoves that are placed on wood floors. All low gas stoves shall be placed on iron stands, or the burners shall be at least six inches above the base of the stoves, and metal guard plates placed four inches below the burners, and all woodwork under them shall be covered with metal.

**Notice as to Heating Apparatus.**

§ 88. In cases where hot water, steam, hot air or other heating appliances or furnaces are hereafter placed in any building,

or flues or fire-places are changed or enlarged, due notice shall first be given to the department of buildings by the person or persons placing the said furnace or furnaces in said building, or by the contractor or superintendent of said work.

**Gas and Water Pipes.**

§ 89. Every building, other than a dwelling-house, hereafter erected, and all factories, hotels, churches, theaters, schoolhouses and other buildings of a public character now erected in which gas or steam is used for lighting or heating, shall have the supply pipes leading from the street mains provided each with a stop-cock placed in the sidewalk at or near the curb, and so arranged as to allow of shutting off at that point. No gas, water or other pipes which may be introduced into any buildings shall be let into the beams unless the same be placed within thirty-six inches of the end of the beams; and in no building shall the said pipes be let into the beams more than two inches in depth. All said pipes shall be installed in accordance with the rules and regulations prescribed by the board of buildings. All gas brackets shall be placed at least three feet below any ceiling or woodwork, unless the same is properly protected by a shield; in which case the distance shall be not less than eighteen inches. No swinging or folding gas bracket shall be placed against any stud partition or woodwork. No gas bracket on any lath and plaster partition or woodwork shall be less than five inches in length, measured from the burner to the plaster surface or woodwork. Gas lights placed near window curtains or any other combustible material shall be protected by a proper shield.

## PART XVII.

ROOFS, LEADERS, CORNICES, BULKHEADS, SCUTTLES AND TANKS.

### Mansard Roofs.

§ 90. If a mansard or other roof of like character having a pitch of over sixty degrees be placed on any building, except a wood building, or a dwelling-house not exceeding three stories nor more than forty feet in height, it shall be constructed of iron rafters and lathed with iron or steel on the inside and plastered, or filled in with fireproof material not less than three inches thick, and covered with metal, slate or tile.

### Cornices and Gutters.

§ 91. On all buildings hereafter erected within the fire limits, the exterior cornices, inclusive of those on show windows, and gutters, shall be of some fireproof material. All fireproof cornices shall be well secured to the walls with iron anchors, independent of any woodwork. In all cases the walls shall be carried up to the planking of the roof. Where the cornice projects above the roof the walls shall be carried up to the top of the cornice. The party walls shall in all cases extend up above the planking of the cornice and be coped. All exterior wooden cornices that may now be or that may hereafter become unsafe or rotten shall be taken down, and if replaced, shall be constructed of some fireproof material. All exterior cornices of wood or gutters that may hereafter be damaged by fire to the extent of one-half shall be taken down, and if replaced shall be constructed of some fireproof material; but if not damaged to the extent of one-half, the same may be repaired with the same kind of material of which they were originally constructed.

### Bulkheads on Roofs and Scuttles.

§ 92. Bulkheads used as inclosures for tanks and elevators, and coverings for the machinery of elevators and all other bulkheads, including the bulkheads of all dwelling-houses more than four stories in height hereafter erected or altered, may be constructed of hollow fireproof blocks; or of wood, covered with not less than two inches of fireproof material, or filled in the thickness of the studding with such material, and covered on all

outside surfaces with metal, including both surfaces and edges of doors. All such buildings shall have scuttles or bulkheads covered with some fireproof materials, with ladders or stairs leading thereto, and easily accessible to all occupants. No scuttle shall be less in size than two by three feet. No staging or stand shall be constructed or occupied upon the roof of any building without first obtaining the approval of the commissioner of buildings having jurisdiction.

**Tanks.**

§ 93. Tanks containing more than five hundred gallons of water or other fluid hereafter placed in any story, or on the roof or above the roof of any building now or hereafter erected, shall be supported on iron or steel beams of sufficient strength to safely carry the same; and the beams shall rest at both their ends on brick walls or on iron or steel girders or iron or steel columns or piers of masonry. Underneath any said water tank or on the side near the bottom of the same, there shall be a short pipe or outlet not less than four inches in diameter, fitted with a suitable valve having a level or wheel handle to same, so that firemen or others can readily discharge the weight of the fluid contents from the tank, in case of necessity. Such tanks shall be placed where practicable at one corner of a building, and shall not be placed over nor near a line of stairs. Covers on top of water tanks placed on roofs, if not of wood, shall be covered with tin.

**Roofing and Leaders within the Fire Limits.**

§ 94. The planking and sheathing of the roofs of buildings shall not in any case be extended across the side or party wall thereof. Every building and the tops and sides of every dormer window thereon shall be covered and roofed with brick, tile, slate, tin, copper, iron; or plastic slate, asphalt, slag, or gravel may be used, provided such roofing shall be composed of not less than five layers of roofing felt, cemented together and finished with not less than ten gallons of coal tar, pitch or asphalt to each one hundred square feet of roof, or such other quality of fireproof roofing as the board of buildings, under its certificate, may authorize, and the outside of the frames of every dormer window hereafter placed upon any building shall be made of some fireproof material. No wood building within the fire limits more than two stories or above twenty feet in height above the curb level to the highest part thereof, which shall require

roofing, shall be roofed with any other roofing or covered except as aforesaid. Nothing in this section shall be construed to prohibit the repairing of any shingle roof, provided the building is not altered in height. All buildings shall be kept provided with proper metallic leaders for conducting water from the roofs in such manner as shall protect the walls and foundations of said buildings from injury. In no case shall the water from the said leaders be allowed to flow upon the sidewalk, but the same shall be conducted by pipe or pipes to the sewer. If there be no sewer in the street upon which such buildings front, then the water from said leader shall be conducted by proper pipe or pipes, below the surface of the sidewalk to the street gutter.

## PART XVIII.

### ELEVATORS, HOISTWAYS AND DUMB WAITERS.

**Elevators and Hoistways.**

§ 95. In any building in which there shall be any hoistway or freight elevator or wellhole not inclosed in walls constructed of brick or other other fireproof material and provided with fireproof doors, the openings thereof through and upon each floor of said building, shall be provided with and protected by a substantial guard or gate and with such good and sufficient trapdoors as may be directed and approved by the department of buildings; and when in the opinion of the commissioner of buildings having jurisdiction, automatic trapdoors are required to the floor openings of any uninclosed freight elecator, the same shall be constructed so as to form a substantial floor surface when closed, and so arranged as to open and close by the action of the elevator in its passage either ascending or descending. The said commissioner of buildings shall have exclusive power and authority to require the openings of hoistways or hoistway shafts, elevators and wellholes in buildings to be inclosed or secured by trapdoors, guards or gates and railings. Such guards or gates shall be kept closed at all times, except when in actual use, and the trapdoors shall be closed at the close of the business of each day by the occupant or occupants of the building having the use or control of the same.

**Elevator Inclosures.**

§ 96. All elevators hereafter placed in any building, except such fireproof buildings as have been or may be hereafter erected, shall be inclosed in suitable walls of brick or with a suitable framework of iron and burnt clay filling, or of such other fireproof material and form of construction as may be approved by the department of buildings, except that the inclosure walls in nonfireproof buildings over five stories high, used as warehouses or factories shall be of brick. If the inclosure walls are of brick, laid in cement mortar and not used as bearing walls, they may be eight inches in thickness for not more than fifty feet of their uppermost height, and increasing in thickness four inches for each lower fifty feet portion or part thereof. Said walls or

constructions shall extend through and at least three feet above the roof. All openings in the said walls shall be provided with fireproof shutters or fireproof doors, made solid for three feet above the floor level, except that the doors used for openings in buildings intended for the occupancy of one family may be of wood covered on the inner surface and edges with metal, not including the openings in the cellar, nor above the roof in any such shaft was. The roofs over all inclosed elevators shall be made of fireproof materials, with a skylight at least three-fourths the area of the shaft, made of glass, set in iron frames. When the shaft does not extend to the ground, the lower end shall be inclosed in fireproof material.

**Dumb-Waiter Shafts.**

§ 97. All dumb-waiter shafts, except such as do not extend more than three stories above the celler or basement in dwelling-houses, shall be inclosed in suitable walls of brick or with burnt clay blocks, set in iron frames of proper strength or fireproof blocks strengthened with metal dowels, or such other fireproof material and form of construction as may be approved by the commissioner of buildings having jurisdiction. Said walls or construction shall extend at least three feet above the roof and be covered with a skylight at least three-fourths the area of the shaft, made with metal frames and glazed. All openings in the inclosure walls or construction shall be provided with self-closing fireproof doors. When the shaft does not extend to the floor level of the lowest story, the bottom of the shaft shall be constructed of fireproof material.

**Elevators in Staircase Inclosures.**

§ 98. Open grill work inclosures for passenger elevators, not extending below the level of the first floor, may be erected in staircase inclosures in buildings where the entire space occupied by the stairs and elevators is inclosed in brick or stone walls, and the stairs are constructed as specified in section 53 of this code.

**Elevators in Existing Hotels.**

§ 99. In every nonfireproof building, used or occupied as a hotel, in which there is an elevator not inclosed in fireproof shafts, such elevator shall be inclosed in suitable walls, constructed and arranged as in this code required for elevator shafts.

**Screen Under Elevator Sheaves.**

§ 100. Immediately under the sheaves at the top of every elevator shaft in any building there shall be provided and placed a substantial grating or screen of iron or steel of such construction as shall be approved by the Department of Buildings.

**Inspection of Elevators.**

§ 101. The commissioners of buildings, shall cause an inspection of elevators carrying passengers or employes to be made at least once every three months and shall make regulations for the inspection of such elevators with a view to safety; and shall also prescribe suitable qualifications for persons who are placed in charge of the running of such elevators. The regulations shall require any repairs found necessary to any such elevators to be made without delay by the owner or lessee. In case defects are found to exist which endanger life or limb by the continued use of such elevator, then, upon notice from the department of buildings, the use of such elevator shall cease, and it shall not again be used until a certificate shall be first obtained from said department that such elevator has been made safe. No person shall employ or permit any person to be in charge of running any passenger elevator who does not possess the qualifications prescribed therefor.

Every freight elevator or lift shall have a notice posted conspicuously thereon as follows: Persons riding on this elevator do so at their own risk.

## PART XIX.

### FIRE APPLIANCES, FIRE-ESCAPES AND FIREPROOF SHUTTERS AND DOORS.

**Auxiliary Fire Apparatus for Buildings.**

§ 102. In every building now erected, unless already provided with a three-inch or larger vertical pipe, which exceeds one hundred feet in height and in every building hereafter to be erected exceeding eighty-five feet in height, and when any such building does not exceed one hundred and fifty feet in height, it shall be provided with a four-inch standpipe running from cellar to roof, with one two-way three-inch Siamese connection to be placed on street above the curb level, and with one two-and-one-half inch outlet, with hose attached thereto on each floor, placed as near the stairs as practicable; and all buildings now erected, unless already provided with a three-inch or larger vertical pipe, or hereafter to be erected, exceeding one hundred and fifty feet in height, shall be provided with an auxiliary fire apparatus and appliances, consisting of water tank on roof, or in cellar, standpipes, hose, nozzles, wrenches, fire extinguishers, hooks, axes and such other appliances as may be required by the fire department — all to be of the best material and of the sizes, patterns and regulation kinds used and required by the fire department. In every such building a steam or electric pump and at least one passenger elevator shall be kept in readiness for immediate use by the fire department during all hours of the night and day, including holidays and Sundays. The said steam or electric pumps, if located in the lowest story, shall be placed not less than two feet above the floor level. All the wires and cables which supply power to the electric pumps shall be covered with fireproof material, or protected in such manner as to prevent the destruction or damage of said cables and wires by fire. The boilers which supply power to the passenger elevators and steam or electric pumps, if located in the lowest story, shall be so surrounded by a dwarf brick wall laid in cement mortar, or other suitable permanent waterproof construction, as to exclude water to the depth of two feet above the floor level from flowing into the ash pits of said boilers. When the level of the floor of the lowest story is above the level of the sewer in the street a large cesspool shall be placed in said floor

and connected by a four-inch cast-iron drain pipe with the street sewer. Standpipes shall not be less than six inches in diameter for all buildings exceeding one hundred and fifty feet in height. All standpipes shall extend to the street and there be provided at or near the sidewalk level with the Siamese connections. Said standpipes shall also extend to the roof. Valve outlets shall be provided on each and every story, including the basement and cellar and on the roof. All valves, hose, tools, and other appliances provided for in this section shall be kept in perfect working order, and once a month the person in charge of said building shall make a thorough inspection of the same to see that all valves, hose and other appliances are in perfect working order and ready for immediate use by the fire department. If any of the said buildings extend from street to street, or form an L shape, they shall be provided with standpipes for each street frontage. In such buildings as are used or occupied for business or manufacturing purposes there shall be provided, in connection with said standpipe or pipes, two-and-one-half-inch perforated iron pipes placed on and along the ceiling line of each floor below the first floor, and extending to the full depth of the building. Said perforated pipe shall be provided with a valve placed at or near the standpipe, so that water can be let into same when deemed necessary by the firemen, or in lieu of such perforated pipes automatic sprinklers may be put in. When the building is twenty-five feet or less in width, two lines of perforated pipe shall be provided, and one line additionally for each twelve and one-half feet, or part thereof that the building is wider than twenty-five feet. A suitable iron plate with raised letters shall be fastened to the wall near said standpipe, to read, "This standpipe connects to perforated pipes in the cellar."

**Fire-Escapes.**

§ 103. Every dwelling-house occupied by or built to be occupied by three or more families, and every building already erected, or that may hereafter be erected, more than three stories in height, occupied and used as a hotel or lodging house, and every boarding house having more than fifteen sleeping rooms above the basement story, and every factory, mill, manufactory or workshop, hospital, asylum or institution for the care or treatment of individuals, and every building three stories and over in height used or occupied as a store or workroom, and every building in whole or in part occupied or used as a school or place of instruction or assembly, and every office building five stories or

more in height, shall be provided with such good and sufficient fire-escape, stairways, or other means of egress in case of fire as shall be directed by the department of buildings; and said department shall have full and exclusive power and authority within said city to direct fire-escapes and other means of egress to be provided upon and within said building or any of them. The owner or owners of any building upon which a fire-escape is erected shall keep the same in good repair and properly painted. No person shall at any time place any incumbrance of any kind whatsoever before or upon any fire-escape, balcony or ladder. It shall be the duty of every fireman and policeman who shall discover any fire-escape balcony or ladder of any fire-escape incumbered in any way, to forthwith report the same to the commanding officer of his company or precinct, and such commanding officer shall forthwith cause the occupant of the premises or apartment to which said fire-escape balcony or ladder is attached or for whose use the same is provided, to be notified, either verbally or in writing, to remove such incumbrance and keep the same clear. If said notice shall not be complied with by the removal, forthwith, of such incumbrance, and keeping said fire-escape, balcony or ladder free from incumbrance, then it shall be the duty of said commanding officer to apply to the nearest police magistrate for a warrant for the arrest of the occupant or occupants of the said premises or apartments of which the fire-escape forms a part, and the said parties shall be brought before the said magistrate, as for a misdemeanor; and, on conviction, the occupant or occupants of said premises or apartment shall be fined not more than ten dollars for each offense, or may be imprisoned not to exceed ten days, or both, in the discretion of the court. In constructing all balcony fire-escapes, the manufacturer thereof shall securely fasten thereto, in a conspicuous place, a cast iron plate having suitable raised letters on the same, to read as follows: "Notice: Any person placing any incumbrance on this balcony is liable to a penalty of ten dollars and imprisonment for ten days."

All buildings requiring fire-escapes shall have stationary iron ladders leading to the scuttle opening in the roof thereof, and all scuttles and ladders shall be kept so as to be ready for use at all times. If a bulkhead is used in place of a scuttle, it shall have stairs with sufficient guard or hand rail leading to the roof. In case the building shall be a tenement-house, the door in the bulkhead or any scuttle, shall at no time be locked, but may be fastened on the inside by movable bolts or hooks.

**Fireproof Shutters and Doors.**

§ 104. Every building which is more than two stories in height above the curb level, except dwelling-houses, hotels, schoolhouses and churches, shall have doors, blinds or shutters made of iron, hung to iron hanging frames or to iron eyes built into the wall, on every exterior window or opening above the first story thereof, excepting on the front openings of buildings fronting on streets which are more than thirty feet in width, or where no other buildings are within thirty feet of such openings. The said doors, blinds or shutters may be constructed of pine or other soft wood of two thicknesses of matched boards at right angles with each other, and securely covered with tin, on both sides and edges, with folded lapped joints, the nails for fastening the same being driven inside the lap; the hinges and bolts or latches shall be secured or fastened to the door or shutter after the same has been covered with the tin, and such doors or shutters shall be hung upon an iron frame, independent of the woodwork of the windows and doors, or two iron hinges securely fastened in the masonry; or such frames, if of wood, shall be covered with tin in the same manner as the doors and shutters. All shutters opening on fire-escapes, and at least one row, vertically, in every three rows on the front window openings above the first story of any building, shall be so arranged that they can be readily opened from the outside by firemen. All rolling iron or steel shutters hereafter placed in the first story of any building, shall be counter-balanced so that said rolling shutters may be readily opened by the firemen. No building hereafter erected, other than a dwelling-house or fireproof building, shall have inside iron or steel shutters to windows above the first story. All windows and openings above the first story of any building may be provided with other suitable protection or may be exempted from having shutters by the board of buildings or the board of examiners as the case may be. All buildings specified in this section, hereafter erected or altered, having openings in interior walls, shall be provided with suitable fireproof doors where deemed necessary by the commissioner of buildings having jurisdiction. All occupants of buildings shall close all exterior and interior fireproof shutters, doors and blinds at the close of the business of each day.

## PART XX.

### FIREPROOF BUILDINGS.

**Fireproof Buildings.**

§ 105. Every building hereafter erected or altered, to be used as a hotel, lodging house, school, theater, jail, police station, hospital, asylum, institution for the care or treatment of persons, the height of which exceeds thirty-five feet, excepting all buildings for which specifications and plans have been heretofore submitted to and approved by the department of buildings, and every other building the height of which exceeds seventy-five feet, except as herein otherwise provided, shall be built fireproof, that is to say, they shall be constructed with walls of brick, stone, Portland cement concrete, iron or steel, in which wood beams or lintels shall not be placed, and in which the floors and roofs shall be of materials provided for in section 106 of this code. The stairs and staircase landings shall be built entirely of brick, stone, Portland cement concrete, iron or steel. No woodwork or other inflammable material shall be used in any of the partitions, furrings or ceilings in any such fireproof buildings, excepting, however, that when the height of the building does not exceed twelve stories nor more than one hundred and fifty feet, the doors and windows and their frames, the trims, the casings, the interior finish when filled solid at the back with fireproof material, and the floor boards and sleepers directly thereunder, may be of wood, but the space between the sleepers shall be solidly filled with fireproof materials and extend up to the under side of the floor boards.

When the height of a fireproof building exceeds twelve stories, or more than one hundred and fifty feet, the floor surfaces shall be of stone, cement, rock asphalt, tiling or similar incombustible material, or the sleepers and floors may be of wood treated by some process, approved by the board of buildings, to render the same fireproof. All outside window frames and sash shall be of metal, or wood covered with metal. The inside window frames and sash, doors, trim and other interior finish may be of wood covered with metal, or wood treated by some process approved by the board of buildings to render the same fireproof.

All half partitions or permanent partitions between rooms in fireproof buildings shall be built of fireproof material and shall

not be started on wood sills, nor on wood floor boards, but be built upon the fireproof construction of the floor and extend to the fireproof beam filling above. The tops of all door and window openings in such partitions shall be at least twelve inches below the ceiling line.

**Fireproof Floors.**

§ 106. Fireproof floors shall be constructed with wrought iron or steel floor beams so arranged as to spacing and length of beams that the load supported by them, together with the weights of the materials used in the construction of the said floors shall not cause a greater deflection of the said beams than one-thirtieth of an inch per foot of span under the total load, and they shall be tied together at intervals of not more than eight times the depth of the beam point. Between the wrought iron or steel floor beams shall be placed brick arches springing from the lower flange of the steel beams. Said brick arches shall be designed with a rise to safely carry the imposed load, but never less than one and one-quarter inches for each foot of span between the beams, and they shall have a thickness of not less than four inches for spans of five feet or less and eight inches for spans over five feet, or such thickness as may be required by the board of buildings. Said brick arches shall be composed of good, hard brick or hollow brick of ordinary dimensions laid to a line on the centers, properly and solidly bounded, each longitudinal line of brick breaking joints with the adjoining lines in the same ring and with the ring under it when more than a four-inch arch is used. The brick shall be well wet and the joints filled in soild with cement mortar. The arches shall be well grouted and properly keyed. Or the space between the beams may be filled in with hollow tile arches of hard-burnt clay or porous terra-cotta of uniform density and hardness of burn. The skew backs shall be of such form and section as to properly receive the thrust of said arch; and the said arches shall be of a depth and sectional area to carry the load to be imposed thereon, without straining the material beyond its safe working load, but said depth shall not be less than one and three-quarter inches for each foot of span, not including any portion of the depth of the tile projecting below the under side of the beams, a variable distance being allowed of not over six inches in the span between the beams, if the soffits of the tile are straight; but if said arches are segmental, having a rise of not less than one and one-quarter inches for each foot

of span, the depth of the tile shall be not less than six inches. The joints shall be solidly filled with cement mortar as required for common brick arches and the arch so constructed that the key block shall always fall in the central portion. The shells and webs of all end construction blocks shall abut, one against another. Or the space between the beams may be filled with arches of Portland cement concrete, segmental in form, and which shall have a rise of not less than one and one-quarter inches for each foot of span between the beams. The concrete shall not be less than four inches in thickness at the crown of the arch and shall be mixed in the proportions required by section 18 of this code. These arches shall in all cases be reinforced and protected on the under side with corrugated or sheet steel, steel ribs, or metal in other forms weighing not less than one pound per square foot and having no openings larger than three inches square. Or between the said beams may be placed solid or hollow burnt-clay, stone, brick or concrete slabs in flat or curved shapes, concrete or may be used in composition, and any of said materials may be used in combination with wire cloth, expanded metal, wire strands, or wrought iron or steel bars; but in any such construction and as a precedent condition to the same being used, tests shall be made as herein provided by the manufacturer thereof under the direction and to the satisfaction of the board of buildings, and evidence of the same shall be kept on file in the department of buildings, showing the nature of the test and the result of the test. Such tests shall be made by constructing within inclosure walls a platform consisting of four rolled steel beams, ten inches deep, weighing each twenty-five pounds per lineal foot, and placed four feet between the centers, and connected by transverse tie-rods, and with a clear span of fourteen feet for the two interior beams and with the two outer beams supported on the side walls throughout their length, and with both a filling between the said beams, and a fireproof protection of the exposed parts of the beams of the system to be tested, constructed as in actual practice, with the quality of material ordinarily used in that system and the ceiling plastered below, as in a finished job; such filling between the two interior beams being loaded with a distributed load of one hundred and fifty pounds per square foot of its area and all carried by such filling; and subjecting the platform so constructed to the continuous heat of a wood fire below, averaging not less than seventeen hundred degrees Fahrenheit for not less than four hours, during which time the platform shall have remained in such condition that no flame will

have passed through the platform or any part of the same, and that no part of the load shall have fallen through, and that the beams shall have been protected from the heat to the extent that after applying to the under side of the platform at the end of the heat test a stream of water directed against the bottom of the platform and discharged through a one and one-eighth inch nozzle under sixty pounds pressure for five minutes, and after flooding the top of the platform with water under low pressure, and then again applying the stream of water through the nozzle under the sixty pounds pressure to the bottom of the platform for five minutes, and after a total load of six hundred pounds per square foot uniformly distributed over the middle bay shall have been applied and removed, after the platform shall have cooled, the maximum deflection of the interior beams shall not exceed two and one-half inches. The board of buildings may from time to time prescribe additional or different tests than the foregoing for systems of filling between iron or steel floor beams, and the protection of the exposed parts of the beams. Any system failing to meet the requirements of the test of heat, water and weight, as herein prescribed shall be prohibited from use in any building hereafter erected. Duly authenticated records of the tests heretofore made of any system of fireproof floor filling and protection of the exposed parts of the beams may be presented to the board of buildings, and if the same be satisfactory to said board, it shall be accepted as conclusive. No filling of any kind which may be injured by frost shall be placed between said floor beams during freezing weather, and if the same is so placed during any winter month, it shall be temporarily covered with suitable material for protection from being frozen. On top of any arch, lintel or other device which does not extend to and form a horizontal line with the top of the said floor beams, cinder concrete or other suitable fireproof material shall be placed to solidly fill up the space to a level with the top of said floor beams, and shall be carried to the under side of the wood floor boards in case such be used. Temporary centering when used in placing fireproof systems between floor beams, shall not be removed within twenty-four hours or until such time as the mortar or material has set. All fireproof floor systems shall be of sufficient strength to safely carry the load to be imposed thereon without straining the material in any case beyond its safe working load. The bottom flanges of all wrought iron or rolled steel floor and flat roof beams, and all exposed portions of such beams below the abutments of the

floor arches shall be entirely incased with hard-burnt clay, porous terra-cotta or other fireproof material allowed to be used for the filling between the beams under the provisions of this section, such incasing material to be properly secured to the beams.

The exposed sides and bottom plates or flanges of wrought iron or rolled steel girders supporting iron or steel floor beams, or supporting floor arches or floors, shall be entirely incased in the same manner. Openings through fireproof floors for pipes, conduits and similar purposes shall be shown on the plans. After the floors are constructed no opening greater than eight inches square shall be cut through said floors unless properly boxed or framed around with iron. And such openings shall be filled in with fireproof material after the pipes or conduits are in place.

**Incasing Interior Columns.**

§ 107. All cast iron, wrought iron or rolled steel columns, including the lugs and brackets on same, used in the interior of any fireproof building, or used to support any fireproof floor, shall be protected with not less than two inches of fireproof material, securely applied. The extreme outer edge of lugs, brackets and similar supporting metal may project to within seven-eighths of an inch of the surface of the fireproofing.

## PART XXI.

### PUBLIC BUILDINGS, THEATERS AND PLACES OF ASSEMBLAGE.

**Public Buildings.**

§ 108. In all buildings of a public character, such as hotels, churches, theaters, restaurants, railroad depots, public halls, and other buildings used or intended to be used for purposes of public assembly, amusement or instruction, and including department stores and other business and manufacturing buildings where large numbers of people are congregated, the halls, doors, stairways, seats, passageways and aisles, and all lighting and heating appliances and apparatus shall be arranged as the department of buildings shall direct to facilitate egress in cases of fire or accident, and to afford the requisite and proper accommodation for the public protection in such cases. All aisles and passageways in said building shall be kept free from camp stools, chairs, sofas and other obstructions, and no person shall be allowed to stand in or occupy any of said aisles or passageways, during any performance, service, exhibition, lecture, concert, ball or any public assemblage. The commissioner of buildings having jurisdiction may at any time serve a written or printed notice upon the owner, lessee or manager of any of said buildings, directing any act or thing to be done or provided in or about the said buildings and the several appliances therewith connected, such as halls, doors, stairs, windows, seats, aisles, firewalls, fire apparatus and fire-escapes, as he may deem necessary. Nothing herein contained shall be construed to authorize or require any other alterations to theaters existing prior to June 9, 1885, than are specified in this section.

**Theatres and Places of Public Amusement.**

§ 109. Every theater or opera house or other building intended to be used for theatrical or operatic purposes, or for public entertainment of any kind, hereafter erected for the accommodation of more than three hundred persons shall be built to comply with the requirements of this section. No building which, at the time of the passage of this code, is not in actual use for theatrical or operatic purposes, and no building hereafter erected not in conformity with the requirements of this

section, shall be used for theatrical or operatic purposes, or for public entertainments of any kind, until the same shall have been made to conform to the requirements of this section. And no building hereinbefore described shall be opened to the public for theatrical or operatic purposes, or for public entertainments of any kind, until the department of buildings and the fire commissioner shall have approved the same in writing as conforming to the requirements of this section. Every such building shall have at least one front on the street, and in such front there shall be suitable means of entrance and exit for the audience, not less than twenty-five feet in width. In addition to the aforesaid entrances and exits on the street there shall be reserved for service in case of an emergency an open court or space in the rear and on the side not bordering on the street, where said building is located on a corner lot; and in the rear and on both sides of said building, where there is but one frontage on the street as hereinafter provided. The width of such open court or courts shall be not less than ten feet where the seating capacity is not over one thousand people, above one thousand and not more than eighteen hundred people twelve feet in width, and above eighteen hundred people fourteen feet in width. Said open court or courts shall extend the full length and height of the building and across on each side and rear thereof where its sides or side does not abut on a street or alley, and shall be of the same width at all points, and exits hereafter specified shall lead into such open courts. During the performance the doors or gates in the corridors shall be kept open by proper fastenings; at other times they may be closed and fastened by movable bolts or blocks. The said open courts and corridors shall not be used for storage purposes, or for any purposes whatsoever except for exit and entrance from and to the auditorium and stage, and must be kept free and clear during performances. The level of said corridors at the front entrance to the building shall be not greater than one step above the level of the sidewalk where they begin at the street entrance. The entrance of the main front of the building shall be not on a higher level from the sidewalk than four steps, unless approved by the department of buildings. To overcome any difference of level in and between courts, corridors, lobbies, passages and aisles on the ground floor, gradients shall be employed of not over one foot in twelve feet, with no perpendicular rises. From the auditorium opening into the said open courts or on the side street, there shall be not less than two exits on each side in each tier from and including the parquet and each and every gallery.

Each exit shall be at least five feet in width in the clear and provided with doors of iron or wood; if of wood, the doors shall be constructed as hereinbefore in this code described. All of said doors shall open outwardly, and shall be fastened with movable bolts, the bolts to be kept drawn during performances. There shall be balconies not less than six feet in width in the said open court or courts at each level or tier above the parquet, on each side of the auditorium, of sufficient length to embrace the two exits, and from said balconies there shall be staircases extending to the ground level, with a rise of not over eight and one-half inches to a step and not less than nine inches tread, exclusive of the nosing. The staircase from the upper balcony to the next below shall be not less than forty-eight inches in width in the clear, and from the first balcony to the ground four feet in width in the clear where the seating capacity of the auditorium is for one thousand people or less, four feet six inches in the clear where above one thousand and not more than eighteen hundred people, and five feet in the clear where above eighteen hundred people and not more than twenty-five hundred people, and not over five feet six inches in the clear where above twenty-five hundred people. All the before-mentioned balconies and staircases shall be constructed of iron throughout, including the floors, and of ample strength to sustain the load to be carried by them, and they shall be covered with metal hood or awning, to be constructed in such manner as shall be approved by the department of buildings. Where one side of the building borders on the street, there shall be balconies and staircases of like capacity and kind, as before mentioned, carried to the ground. When located on a corner lot, that portion of the premises bordering on the side street and not required for the uses of the theatre may, if such portion be not more than twenty-five feet in width, be used for offices, stores or apartments, provided the walls separating this portion from the theater proper are carried up solidly to and through the roof, and that a fireproof exit is provided for the theater on each tier, equal to the combined width of exits opening on opposite sides in each tier, communicating with balconies and staircases leading to the street in manner provided elsewhere in this section; said exit passages shall be entirely cut off by brick walls from said offices, stores or apartments, and the floors and ceilings in each tier shall be fireproof. Nothing herein contained shall prevent a roof garden, art gallery or rooms for similar purposes being placed above a theatre or public building, provided the floor of the same forming the roof over such theater or building

shall be constructed of iron or steel and fireproof materials, and that said floor shall have no covering boards or sleepers of wood, but be of tile or cement. Every roof over said garden or rooms shall have all supports and rafters of iron or steel, and be covered with glass or fireproof materials, or both, but no such roof garden, art gallery or room for any public purpose shall be placed over or above that portion of any theater or other building which is used as a stage. No workshop, storage or general property room shall be allowed above the auditorium or stage, or under the same or in any of the fly galleries. All of said rooms or shops may be located in the rear or at the side of the stage, but in such cases they shall be separated from the stage by a brick wall, and the opening leading into said portions shall have fireproof doors on each side of the openings, hung to iron eyes built into the wall. No portion of any building hereafter erected or altered, used or intended to be used for theatrical or other purposes as in this section specified, shall be occupied or used as a hotel, boarding or lodging house, factory, workshop or manufactory, or for storage purposes, except as may be hereafter specially provided for. Said restrictions relate not only to that portion of the building which contains the auditorium and the stage, but applies also to the entire structure in conjunction therewith. No store or room contained in the building, or the offices, stores or apartments adjoining, as aforesaid, shall be let or used for carrying on any business, dealing, and articles designated as specially hazardous in the classification of the New York board of fire underwriters, or for manufacturing purposes. No lodging accommodations shall be allowed in any part of the building communicating with the auditorium. Interior walls built of fireproofing materials shall separate the auditorium from the entrance vestibule, and from any room or rooms over the same, also from lobbies, corridors, refreshment or other rooms. All staircases for the use of the audience shall be inclosed with walls of brick, or of fireproof materials approved by the department of buildings, in the stories through which they pass, and the openings to said staircases from each tier shall be the full width of said staircase. No door shall open immediately upon a flight of stairs, but a landing at least the width of the door shall be provided between such stairs and such door. A firewall, built of brick, shall separate the auditorium from the stage. The same shall extend at least four feet above the stage roof, or the auditorium roof, if the latter be the higher, and shall be coped. Above the proscenium

opening there shall be an iron girder of sufficient strength to safely support the load above, and the same shall be covered with fireproof materials to protect it from the heat. Should there be constructed an orchestra over the stage, above the proscenium opening, the said orchestra shall be placed on the auditorium side of the proscenium firewall, and shall be entered only from the auditorium side of said wall. The molded frame around the proscenium opening shall be formed entirely of fireproof materials; if metal be used, the metal shall be filled in solid with non-combustible material and securely anchored to the wall with iron. The proscenium opening shall be provided with a fireproof metal curtain, or a curtain of asbestos or other fireproof material approved by the department of buildings, sliding at each end within iron grooves, securely fastened to the brick wall and extending into such grooves to a depth not less than six inches on each side of the opening. Said fireproof curtain shall be raised at the commencement of each performance and lowered at the close of said performance, and be operated by approved machinery for that purpose. The proscenium curtains shall be placed at least three feet distant from the footlights at the nearest point. No doorway or opening through the proscenium wall, from the auditorium, shall be allowed above the level of the first floor, and such first floor openings shall have fireproof doors on each face of the wall and the doors shall be hung so as to be opened from either side at all times. There shall be provided over the stage metal skylights of an area or combined area of at least one-eighth the area of said stage, fitted up with sliding sash and glazed with double thick sheet glass not exceeding one-twelfth of an inch thick, and each pane thereof measuring not less than 300 square inches, and the whole of which skylight shall be so constructed as to open instantly on the cutting or burning of a hempen cord, which shall be arranged to hold said skylights closed or some other equally simple approved device for opening them may be provided. Immediately underneath the glass of said skylights there shall be wire netting, but wire glass shall not be used in lieu of this requirement. All that portion of the stage not comprised in the working of scenery, traps and other mechanical apparatus for the presentation of a scene, usually equal to the width of the proscenium opening, shall be built of iron or steel beams filled in between with fireproof material, and all girders for the support of said beams shall be of wrought iron or rolled steel. The fly-galleries entire, including pin-rails, shall be constructed of iron or steel, and the floors of said galleries shall be composed of iron

or steel beams, filled with fireproof materials, and no wood boards or sleepers shall be used as covering over beams, but the said floors shall be entirely fireproof. The rigging loft shall be fireproof. All stage scenery, curtains and decorations made of combustible material, and all woodwork on or about the stage shall be painted or saturated with some noncombustible material or otherwise rendered safe against fire, and the finishing coats of paint applied to all woodwork through the entire building shall be of such kind as will resist fire to the satisfaction of the department of buildings. The roof over the auditorium and the entire main floor of the auditorium and vestibule, also the entire floor of the second story of the front superstructure over the entrance, lobby and corridors, and all galleries and supports for the same in the auditorium shall be constructed of iron or steel and fireproof materials, not excluding the use of wood floorboards and necessary sleepers to fasten the same to, but such sleepers shall not mean timbers of support, and the space between the sleepers, excepting a portion under the stepping in the galleries, which shall be properly fire-stopped, shall be solidly filled with incombustible material up to under side of the floorboards. The fronts of each gallery shall be formed of fireproof materials, except the capping, which may be made of wood. The ceiling under each gallery shall be entirely formed of fireproof materials. The ceiling by the auditorium shall be formed of fireproof materials. All lathing, whenever used, shall be of wire or other metal. The partitions in that portion of the building which contains the auditorium, the entrance and vestibule and every room and passage devoted to the use of the audience shall be constructed of fireproof materials, including the furring of outside or other walls. None of the walls or ceilings shall be covered with wood sheathing, canvas or any combustible material. But this shall not exclude the use of wood wainscoting to a height not to exceed six feet, which shall be filled in solid between the wainscoting and the wall with fireproof materials. The walls separating the actors' dressing rooms from the stage and the partitions dividing the dressing rooms, together with the partitions of every passageway from the same to the stage, and all other partitions on or about the stage shall be constructed of fireproof material approved by the department of buildings. All doors in any of said partitions shall be fireproof. All shelving and cupboards in each and every dressing room, property room or other storage rooms shall be constructed of metal, slate or some fireproof material. Dressing rooms may

be placed in the fly-galleries provided that proper exits are secured therefrom to the fire escapes in the open courts, and that the partitions and other matters pertaining to dressing rooms shall conform to the requirements herein contained, but the stairs leading to the same shall be fireproof. All dressing rooms shall have an independent exit leading directly into a court or street, and shall be ventilated by windows in the external walls; and no dressing room shall be below the street level. All windows shall be arranged to open, and none of the windows in outside walls shall have fixed sashes, iron grills or bars. All seats in the auditorium, excepting those contained in boxes, shall be not less than thirty-two inches from back to back, measured in a horizontal direction, and firmly secured to the floor. No seat in the auditorium shall have more than six seats intervening between it and an aisle on either side. No stool or seat shall be placed in any aisle. All platforms in galleries formed to receive the seats shall not be more than twenty-one inches in height of riser, nor less than thirty-two inches in width of platform. All aisles on the respective floors in the auditorium shall be not less than three feet wide where they begin, and shall be increased in width toward the exits in a ratio of one and one-half inches to five running feet. The foyers, lobbies, corridors, passages and rooms for the use of the audience, not including aisles spaced between seats, shall on the first or main floor where the seating capacity exceeds five hundred or more, be at least sixteen feet clear, back of the last row of seats, and on each balcony or gallery at least twelve feet clear of the last row of seats. Gradients or inclined planes shall be employed instead of steps where possible to overcome slight difference of level in or between aisles, corridors and passages. Every theater accommodating three hundred persons shall have at least two exits; when accommodating five hundred persons, at least three exits shall be provided; these exits not referring to or including the exits to the open court at the side of the theater. Doorways of exit or entrance for the use of the public shall be not less than five feet in width, and for every additional one hundred persons or portions thereof to be accommodated, in excess of five hundred, an aggregate of twenty inches additional exit width must be allowed. All doors of exit or entrance shall open outwardly and be hung to swing in such a manner as not to become an obstruction in a passage or corridor, and no such doors shall be closed and locked during any representation, or when the

building is open to the public. Distinct and separate places of exit and entrance shall be provided for each gallery above the first. A common place of exit and entrance may serve for the main floor of the auditorium and the first gallery, provided its capacity be equal to the aggregate capacity of the outlets from the main floor and the said gallery. No passage leading to any stairway communicating with any entrance or exit shall be less than four feet in width in any part thereof. All stairs within the building shall be constructed of fireproof material throughout. Stairs from balconies and galleries shall not communicate with the basement or cellar. All stairs shall have treads of uniform width and risers of uniform height throughout in each flight. Stairs serving for the exit of fifty people shall be at least four feet wide between railings or between walls, and for every additional fifty people to be accommodated six inches must be added to their width. The width of all stairs shall be measured in the clear between hand-rails. In no case shall the risers of any stairs exceed seven and a half inches in height, nor shall the treads, exclusive of nosings, be less than ten and one- half inches wide in straight stairs. No circular or winding stairs for the use of the public shall be permitted. Where the seating capacity is for more than one thousand people, there shall be at least two independent staircases, with direct exterior outlets, provided for each gallery in the auditorium, where there are not more than two galleries, and the same shall be located on opposite sides of said galleries. Where there are more than two galleries one or more additional staircases shall be provided, the outlets from which shall communicate directly with the principal exit or other exterior outlets. All said staircases shall be of width proportionate to the seating capacity as elsewhere herein prescribed. Where the seating capacity is for one thousand people or less, two direct lines of staircases only shall be required, located on opposite sides of the galleries, and in both cases shall extend from the sidewalk level to the upper gallery, with outlets from each gallery to each of said staircases. At least two independent staircases, with direct exterior outlets, shall also be provided for the service of the stage and shall be located on the opposite sides of the same. All inside stairways leading to the upper galleries of the auditorium shall be inclosed on both sides with walls of fireproof materials. Stairs leading to the first or lower gallery may be left open on one side, in which case they shall be constructed as herein provided for similar stairs leading from the entrance hall to the main floor

of the auditorium. But in no case shall stairs leading to any gallery be left open on both sides. When straight stairs return directly on themselves, a landing of the full width of both flights, without any steps, shall be provided. The outer line of landings shall be curved to a radius of not less than two feet, to avoid square angles. Stairs turning at an angle shall have a proper landing without winders introduced at said turn. In stairs, when two side flights connect with one main flight, no winders shall be introduced, and the width of the main flight shall be at least equal to the aggregate width of the side flights. All stairs shall have proper landings introduced at convenient distances. All inclosed staircases shall have, on both sides, strong hand-rails firmly secured to the wall about three inches distant therefrom and about three feet above the stairs, but said hand-rails shall not run on level platforms and landings where the same is more in length than the width of the stairs. All staircases eight feet and over in width shall be provided with a center hand-rail of metal, not less than two inches in diameter, placed at a height of about three feet above the center of the treads, and supported on wrought metal or brass standards of sufficient strength, placed not nearer than four feet nor more than six feet apart, and securely bolted to the treads or risers of stairs, or both, and at the head of each flight of stairs, on each landing, the post or standard shall be at least six feet in height, to which the rail shall be secured. Every steam boiler which may be required for heating or other purposes shall be located outside of the building, and the space allotted to the same shall be inclosed by walls of masonry on all sides, and the ceiling of such space shall be constructed of fireproof materials. All doorways in said walls shall have fireproof doors. No floor register for heating shall be permitted. No coil or radiator shall be placed in any aisle or passageway used as an exit, but all said coils and radiators shall be placed in recesses formed in the wall or partition to receive the same. All supply, return or exhaust pipes shall be properly incased and protected where passing through floors or near woodwork. Standpipes four inches in diameter shall be provided with hose attachments on every floor and gallery as follows, namely: One on each side of the auditorium in each tier, also on each side of the stage in each tier, and at least one in the property room and one in the carpenter's shop, if the same be contiguous to the building. All such standpipes shall be kept clear from obstruction. Said standpipes shall be separate and distinct, receiving their supply of water direct from the power pump or

pumps, and shall be fitted with the regulation couplings of the fire department, and shall be kept constantly filled with water by means of an automatic power pump or pumps, of sufficient capacity to supply all the lines of hose when operated simultaneously, and said pump or pumps shall be supplied from the street main and be ready for immediate use at all times during the performance in said building. In addition to the requirements contained in this section, the standpipes shall also conform to the requirements contained in section 102 of this code. A separate and distinct system of automatic sprinklers, with fusible plugs, approved by the department of buildings, supplied with water from a tank located on the roof over the stage and not connected in any manner with the standpipes, shall be placed each side of the proscenium opening and on the ceiling or roof over the stage at such intervals as will protect every square foot of stage surface when said sprinklers are in operation. Automatic sprinklers shall also be placed, wherever practicable, in the dressing rooms, under the stage and in the carpenter shop, paint rooms, store rooms and property room. A proper and sufficient quantity of two and one-half inch hose, not less than one hundred feet in length, fitted with the regulation couplings of the fire department and with nozzles attached thereto, and with hose spanners at each outlet, shall always be kept attached to each hose attachment as the fire commissioner may direct. There shall also be kept in readiness for immediate use on the stage, at least four casks full of water, and two buckets to each cask. Said casks and buckets shall be painted red. There shall also be provided hand pumps or other portable fire extinguishing apparatus and at least four axes and two twenty-five foot hooks, two fifteen foot hooks, and two ten foot hooks on each tier or floor of the stage. Every portion of the building devoted to the uses or accommodation of the public, also all outlets leading to the streets and including the open courts or corridors, shall be well and properly lighted during every performance, and the same shall remain lighted until the the entire audience has left the premises. All gas or electric lights in the halls, corridors, lobby or any other part of said buildings used by the audience, except the auditorium, must be controlled by a separate shut-off, located in the lobby and controlled only in that particular place. Gas mains supplying the building shall have independent connections for the auditorium and the stage, and provision shall be made for shutting off the gas from the outside of the building. When interior gas lights are not lighted by electricity other suitable appliances,

to be approved by the department of buildings, shall be provided. All suspended or bracket lights surrounded by glass in the auditorium, or in any part of the building devoted to the public, shall be provided with proper wire netting underneath. No gas or electric light shall be inserted in the walls, woodwork, ceilings, or in any part of the building, unless protected by fireproof materials. All lights in passages and corridors in said buildings, and wherever deemed necessary by the department of buildings shall be protected with proper wire network. The footlights, in addition to the wire network, shall be protected with a strong wire guard and chain, placed not less than two feet distant from said foot lights, and the trough containing said footlights shall be formed of and surrounded by fireproof materials. All border lights shall be constructed according to the best known methods, and subject to the approval of the department of buildings, and shall be suspended for ten feet by wire rope. All ducts or shafts used for conducting heated air from the main chandelier, or from any other light or lights, shall be constructed of metal and made double, with an air space between. All stage lights shall have strong metal wire guards or screens, not less than ten inches in diameter, so constructed that any material in contact therewith shall be out of reach of the flames of said stage lights and must be soldered to the fixture in all cases. The standpipes, gas pipes, electric wires, hose, foot-lights, and all apparatus for the extinguishing of fire or guarding against the same, as in this section specified, shall be in charge and under control of the fire department, and the commissioner of said department is hereby directed to see that the arrangements in respect thereto are carried out and enforced. A diagram or plan of each tier, gallery or floor, showing distinctly the exits therefrom, each occupying a space not less than fifteen square inches, shall be printed in black lines in a legible manner on the programme of the performance. Every exit shall have over the same on the inside the word "Exit" painted in legible letters not less than eight inches high.

§ 2. The provisions of the foregoing section shall not be construed to mean or made to apply to any theater, opera house, or building intended to be used for theatrical or operatic purposes, now erected or for which plans have heretofore been approved by the superintendent of buildings.

## PART XXII.

### IRON AND STEEL CONSTRUCTION.

**Skeleton Construction.**

§ 110. Where columns are used to support iron or steel girders carrying inclosure walls, the said columns shall be of cast iron, wrought iron, or rolled steel, and on their exposed outer and inner surfaces be constructed to resist fire by having a casing of brickwork not less than eight inches in thickness on the outer surfaces, nor less then four inches in thickness on the inner surfaces, and all bonded into the brickwork of the inclosure walls. The exposed sides of the iron or steel girders shall be similarly covered in with brickwork not less than four inches in thickness on the outer surfaces and tied and bonded, but the extreme outer edge of the flanges of beams, or plates or angles connected to the beams, may project to within two inches of the outside surface of the brick casing. The inside surfaces of girders may be similarly covered with brickwork, or if projecting inside of the wall, they shall be protected by terra-cotta, concrete or other fireproof material. Girders for the support of the inclosure walls shall be placed at the floor line of each story.

**Steel and Wrought Iron Columns.**

§ 111. No part of a steel or wrought iron column shall be less than one-quarter of an inch thick. No wrought iron or rolled steel column shall have an unsupported length of more than forty times its least lateral dimension or diameter, except as modified by section 138 of this code, and also except in such cases as the commissioners of buildings may specially allow a greater unsupported length. The ends of all columns shall be faced to a plane surface at right angles to the axis of the columns and the connection between them shall be made with splice plates. The joint may be effected by rivets of sufficient size and number to transmit the entire stress, and then the splice plates shall be equal in sectional area to the area of column spliced. When the section of the columns to be spliced is such that spliced plates cannot be used, a connection formed of plates and angles may be used, designed to properly distribute the stress. No material whether in the body of the column or used as lattice-bar or stay-plate, shall be used in any wrought iron or

steel column of less thickness than one-thirty-second of its unsupported width measured between centers of rivets transversely, or one-sixteenth the distance between centers or rivets in the direction of the stress. Stay-plates are to have not less than four rivets, and are to be spaced so that the ratio of length by the least radius of gyration of the parts connected does not exceed forty; the distance between nearest rivets of two stay-plates shall in this case be considered as length. Steel and wrought iron columns shall be made in one, two or three-story lengths, and the materials shall be rolled in one length wherever practicable to avoid intermediate splices. Where any part of the section of a column projects beyond that of the column below, the difference shall be made up by filling plates secured to column by the proper number of rivets. Shoes of iron or steel, as described for cast iron columns, or built shoes of plates and shapes may be used, complying with same requirements.

**Cast Iron Columns.**

§ 112. Cast iron columns shall not have less diameter than five inches or less thickness than three-quarters of an inch. Nor shall they have an unsupported length of more than twenty times their least lateral dimensions or diameter, except as modified by section 138 of this code, and except the same may form part of an elevator inclosure or staircase, and also except in such cases as the commissioner of buildings having jurisdiction, may specially allow a greater unsupported length. All cast iron columns shall be of good workmanship and material. The top and bottom flanges, seats and lugs shall be of ample strength reinforced by fillets and brackets; they shall be not less than one inch in thickness when finished. All columns must be faced at the ends to a true surface perpendicular to the axis of the column. Column joints shall be secured by not less than four bolts each, not less than three-quarters of an inch in diameter. The holes for these bolts shall be drilled to a template. The core of the column below a joint shall be not larger than the core of the column above, and the metal shall be tapered down for a distance of not less than six inches, or a joint plate may be inserted of sufficient strength to distribute the load. The thickness of metal shall be not less than one-twelfth the diameter or the greatest lateral dimension of cross section, but never less than three-quarters of an inch. Wherever the core of a cast iron column has shifted more than one-fourth the thickness of the shell, the strength shall be computed assuming the thickness of

metal all around equal to the thinnest part, and the column shall be condemned if this computation shows the strength to be less than required by this code. Wherever blowholes or imperfections are found in a cast iron column which reduces the area of the cross-section at that point more than ten per cent., such column shall be condemned. Cast iron posts or columns not cast with one open side or back, before being set up in place, shall have a three-eighths of an inch hole drilled in the shaft of each post or column, by the manufacturer or contractor furnishing the same, to exhibit the thickness of the castings; and any other similar sized hole or holes which the commissioners of buildings may require, shall be drilled in the said posts or columns by the said manufacturer or contractor at his own expense.

Iron or steel shoes or plates shall be used under the bottom tier of columns to properly distribute the load on the foundation. Shoes shall be planed on top.

**Double Columns.**

§ 113. In all buildings hereafter erected or altered, where any iron or steel column or columns are used to support a wall or part thereof, whether the same be an exterior or an interior wall, and columns located below the level of the sidewalk, which are used to support exterior walls or arches over vaults, the said column or columns shall be either constructed double, that is, an outer and an inner column, the inner column alone to be of sufficient strength to sustain safely the weight to be imposed thereon, and the outer columns shall be one inch shorter than the inner columns, or such other iron or steel column of sufficient strength and protected with not less than two inches of fireproof material securely applied, except that double or protected columns shall not be required for walls fronting on streets or courts.

**Party Wall Posts.**

§ 114. If iron or steel posts are to be used as party posts in front of a party wall, and intended for two buildings, then the said posts shall be not less in width than the thickness of the party wall, nor less in depth than the thickness of the wall to be supported above. Iron or steel posts in front of side, division or party walls, shall be filled up solid with masonry and made perfectly tight between the posts and walls. Intermediate posts may be used, which shall be sufficiently strong, and the lintels thereon shall have sufficient bearings to carry the weight above with safety.

**Plates Between Joints of Open Back Columns.**

§ 115. Iron or steel posts or columns with one or more open sides and backs shall have solid iron plates on top of each, excepting where pierced for the passage of pipes.

**Steel and Iron Girders.**

§ 116. Rivets in flanges shall be spaced so that the last value of a rivet for either shear or bearing is equal or greater than the increment of strain due to the distance between adjoining rivets. All other rules given under riveting shall be followed. The lengths of rivets between heads shall be limited to four times the diameter. The compression flange of plate girders shall be secured against buckling, if its length exceeds thirty times its width. If splices are used, they shall fully make good the members sliced in either tension or compression. Stiffeners shall be provided over supports and under concentrated loads; they shall be of sufficient strength as a column, to carry the loads, and shall be connected with a sufficient number of rivets to transmit the stresses into the web plate. Stiffeners shall fit so as to support the flanges of the girders. If the unsupported depth of the web plate exceeds sixty times its thickness, stiffeners shall be used at intervals not exceeding one hundred and twenty times the thickness of the web.

**Rolled Steel and Wrought Iron Beams Used as Girders.**

§ 117. When rolled steel or wrought iron beams are used in pairs to form a girder, they shall be connected together by bolts and iron separators at intervals of not more than five feet. All beams twelve inches and over in depth shall have at least two bolts to each separator.

**Cast Iron Lintels.**

§ 118. Cast iron lintels shall not be used for spans exceeding sixteen feet. Cast iron lintels or beams shall be not less than three-quarters of an inch in thickness in any of their parts.

**Plates Under Ends of Lintels and Girders.**

§ 119. When the lintels or girders are supported at the ends by brick walls or piers they shall rest upon cut granite or bluestone blocks at least ten inches thick, or upon cast iron plates of equal strength by the full size of the bearings. In case the opening is less than twelve feet, the stone blocks may be five inches in thickness, or cast iron plates of equal strength by the

full size of the bearings may be used, provided that in all cases the safe loads do not exceed those fixed by section 139 of this code.

### Rolled Steel and Wrought Iron Floor and Roof Beams.

§ 120. All rolled steel and wrought iron floor and roof beams used in buildings shall be of full weight, straight and free from injurious defects. Holes for tie rods shall be placed as near the thrust of the arch as practicable. The distance between tie rods in floors shall not exceed eight feet, and shall not exceed eight times the depth of floor beams twelve inches and under. Channels or other shapes, where used as skewbacks, shall have a sufficient resisting movement to take up the thrust of the arch. Bearing plates of stone or metal shall be used to reduce the pressure on the wall to the working stress. Beams resting on girders shall be securely riveted or bolted to the same; where joined on a girder, tie-straps of one-half inch net sectional area shall be used, with rivets or bolts to correspond. Anchors shall be provided at the ends of all such beams bearing on walls.

### Templates Under Ends of Steel or Iron Floor Beams.

§ 121. Under the ends of all iron or steel beams where they rest on the walls, a stone on cast iron template shall be built into the walls. Templates under ends of steel or iron beams shall be of such dimensions as to bring no greater pressure upon the brickwork than that allowed by section 139 of this code. When rolled iron or steel floor beams, not exceeding six inches in depth, are placed not more than thirty inches on centers, no templates shall be required.

### Framing and Connecting Structural Work.

§ 122. All iron or steel trimmer beams, headers, and tail beams, shall be suitably framed and connected together, and the iron or steel girders, columns, beams, trusses and all other iron work of all floors and roofs shall be strapped, bolted, anchored and connected together, and to the walls.

All beams framed into and supported by other beams or girders, shall be connected thereto by angles or knees of a proper size and thickness, and have sufficient bolts or rivets in both legs of each connecting angle to transmit the entire weight or load coming on the beam to the supporting beam or girder. In no case shall the shearing value of the bolts or rivets or the bearing value of the connection angles, provided for in section 139 of this code, be exceeded.

**Riveting of Structural Steel and Wrought Iron Work.**

§ 123. The distance from center of a rivet hole to the edge of the material shall not be less than $\frac{5}{8}$ of an inch for $\frac{1}{2}$-inch rivets, $\frac{7}{8}$ of an inch for $\frac{5}{8}$-inch rivets, $1\frac{1}{8}$ of an inch for $\frac{3}{4}$-inch rivets, $1\frac{3}{8}$ of an inch for $\frac{7}{8}$-inch rivets, $1\frac{1}{2}$ of an inch for 1-inch rivets.

Wherever possible, however, the distance shall be equal to two diameters. All rivets, wherever practicable, shall be machine driven. The rivets in connections shall be proportioned and placed to suit the stresses. The pitch of rivets shall never be less than three diameters of the rivet, nor more than six inches. In the direction of the stress it shall not exceed sixteen times the least thickness of the outside member. At right angles to the stress it shall not exceed thirty-two times the least thickness of the outside member. All holes shall be punched accurately, so that upon assembling a cold rivet will enter the hole without straining the material by drifting. Occasional slight errors shall be corrected by reaming. The rivets shall fill the holes completely; the heads shall be hemispherical and concentric with the axis of the rivet. Gussets shall be provided wherever required, of sufficient thickness and size to accommodate the number of rivets necessary to make a connection.

**Bolting of Structural Steel and Wrought Iron Work.**

§ 124. Where riveting is not made mandatory connections may be effected by bolts. These bolts shall be of wrought iron or mild steel, and they shall have U. S. Standard threads. The threads shall be full and clean, the nut shall be truly concentric with the bolt, and the thread shall be of sufficient length to allow the nut to be screwed up tightly. When bolts go through bevel flanges, level washers to match shall be used so that head and nut of bolt are parallel. When bolts are used for suspenders, the working stresses shall be reduced for wrought iron to ten thousand pounds and for steel to fourteen thousand pounds per square inch of net area, and the load shall be transmitted into the head or nut by strong washers distributing the pressure evenly over the entire surface of the same. Turned bolts in reamed holes shall be deemed a substitute for field rivets.

**Steel and Wrought Iron Trusses.**

§ 125. Trusses shall be of such design that the stresses in each member can be calculated. All trusses shall be held rigidly in position by efficient systems of lateral and sway bracing,

struts being spaced so that the maximum limit of length to least radius of gyration, established in section one hundred and eleven of this code, is not exceeded. Any member of a truss subjected to transverse stress, in addition to direct tension or compression, shall have the stresses causing such strain added to the direct stresses coming on the member, and the total stresses thus formed shall in no case exceed the working stresses stated in section one hundred and thirty-nine of this code.

**Riveted Steel and Wrought Iron Trusses.**

§ 126. For tension members, the actual net area only, after deducting rivet holes, one-eighth inch larger than the rivets, shall be considered as resisting the stress. If tension members are made of angle irons riveted through one flange only, only that flange shall be considered in proportioning areas. Rivets to be proportioned as prescribed in section one hundred and twenty-three of this code. If the axes of two adjoining web members do not intersect within the line of the chords, sufficient area shall be added to the chord to take up the bending strains. No bolts shall be used in the connections of riveted trusses, excepting when riveting is impracticable, and then the holes shall be drilled or reamed.

**Steel and Iron Pin-Connected Trusses.**

§ 127. The bending stresses on pins shall be limited to twenty thousand pounds for steel and fifteen thousand pounds for iron. All compression members in pin-connected trusses shall be proportioned, using seventy-five per cent. of the permissible working stress for columns. The heads of all eye-bars shall be made by upsetting or forging. No weld will be allowed in the body of the bar. Steel eye-bars shall be annealed. Bars shall be straight before boring. All pinholes shall be bored true, and at right angles to the axis of the members, and must fit the pin within one-thirty-second of a inch. The distances of pinholes from centre to centre for corresponding members shall be alike, so that, when piled upon one another, pins will pass through both ends without forcing. Eyes and screw ends shall be so proportioned that upon test to destruction, fracture will take place in the body of the member. All pins shall be accurately turned. Pin-plates shall be provided wherever necessary to reduce the stresses on pins to the working stresses prescribed in section one hundred and thirty-nine of this code. These pin-plates shall be connected to the members by rivets of sufficient size and number to transmit the stresses without exceeding work-

ing stresses. All rivets in members of pin-connected trusses shall be machine driven. All rivets in pin-plates which are necessary to transmit stress shall be also machine driven. The main connections of members shall be made by pins. Other connections may be made by bolts. If there is a combination of riveted and pin-connected members in one truss, these members shall comply with the requirements for pin-connected trusses; but the riveting shall comply with the requirements of section one hundred and twenty-six of this code.

**Iron and Other Metal Fronts to Be Filled In.**

§ 128. All cast iron or metal fronts shall be backed up or filled in with masonry of the thicknesses provided for in sections thirty-one and thirty-two.

**Painting of Structural Metal Work.**

§ 129. All structural metal work shall be cleaned of all scale, dirt and rust, and be thoroughly coated with one coat of paint. Cast iron columns shall not be painted until after inspection by the department of buildings. Where surfaces in riveted work come in contact, they shall be painted before assembling. After erection all work shall be painted at least one additional coat. All iron or steel used under water shall be inclosed with concrete.

## PART XXIII.

### Floor Loads — Temporary Supports.

**Floor Loads.**

§ 130. The dead loads in all buildings shall consist of the actual weight of walls, floors, roofs, partitions and all permanent construction.

The live or variable loads shall consist of all loads other than dead loads.

Every floor shall be of sufficient strength to bear safely the weight to be imposed thereon in addition to the weight of the materials of which the floor is composed; if to be used as a dwelling house, apartment house, tenement house, hotel or lodging house, each floor shall be of sufficient strength in all its parts to bear safely upon every superficial foot of its surface not less than sixty pounds; if to be used for office purposes not less than seventy-five pounds upon every superficial foot above the first floor, and for the latter floor one hundred and fifty pounds; if to be used as a school or place of instruction, not less than seventy-five pounds upon every superficial foot; if to be used for stable and carriage house purposes, not less than seventy-five pounds upon every superficial foot; if to be used as a place of public assembly, not less than ninety pounds upon every superficial foot; if to be used for ordinary stores, light manufacturing and light storage, not less than one hundred and twenty pounds upon every superficial foot; if to be used as a store where heavy materials are kept or stored, warehouse, factory, or for any other manufacturing or commercial purpose, not less than one hundred and fifty pounds upon every superficial foot.

The strength of factory floors intended to carry running machinery shall be increased above the minimum given in this section in proportion to the degree of vibratory impulse liable to be transmitted to the floor, as may be required by the commissioner of buildings having jurisdiction. The roofs of all buildings having a pitch of less than twenty degrees shall be proportioned to bear safely fifty pounds upon every superficial foot of their surface, in addition to the weight of materials composing the same. If the pitch be more than twenty degrees the live load shall be assumed at thirty pounds upon every superficial foot measured on a horizontal plane. For sidewalks between

the curb and area lines the live load shall be taken at three hundred pounds upon every superficial foot. Every column, post or other vertical support shall be of sufficient strength to bear safely the weight of the portion of each and every floor depending upon it for support, in addition to the weight required as before stated to be supported safely upon said portion of said floors. For the purpose of determining the carrying capacity of columns of dwellings, office buildings, stores, stables and public buildings when over five stories in height a reduction of the live loads shall be permissible as follows: For the roof and top floor the full live loads shall be used; for each succeeding lower floor it shall be permissible to reduce the live load by five per cent. until fifty per cent. of the live loads fixed by this section is reached, when such reduced loads shall be used for all remaining floors.

**Load on Floors to be Distributed.**

§ 131. The weight placed on any of the floors of any building shall be safely distributed thereon. The commissioner of buildings having jurisdiction may require the owner or occupant of any building, or of any portion thereof, to re-distribute the load on any floor, or to lighten such load, where he deems it to be necessary.

**Strength of Existing Floors to Be Calculated.**

§ 132. In all warehouses, storehouses, factories, workshops, and stores where heavy materials are kept or stored, or machinery introduced, the weight that each floor will safely sustain upon each superficial foot thereof, or upon each carrying part of such floor, shall be estimated by the owner or occupant, or by a competent person employed by the owner or occupant. Such estimate shall be reduced to writing, on printed forms furnished by the department of buildings, stating the material, size, distance apart and span of beams and girders, posts or columns to support floors, and its correctness shall be sworn to by the person making the same, and it shall thereupon be filed in the office of the department of buildings. But if the commissioners of buildings shall have cause to doubt the correctness of said estimate, they are empowered to revise and correct the same, and for the purpose of such revision the officers and employees of the department of buildings may enter any building and remove so much of any floor or other portion thereof as may be required to make necessary measurements and examination.

When the correct estimate of the weight that the floors in any such buildings will safely sustain has been ascertained, as herein provided, the department of buildings shall approve the same, and thereupon the owner or occupant of said building, or of any portion thereof, shall post a copy of such approved estimate in a conspicuous place on each story, or varying parts of each story, of the building to which it relates. Before any building hereafter erected is occupied and used, in whole or in part, for any of the purposes aforesaid, and before any building, erected prior to the passage of this code, but not at such time occupied for any of the aforesaid purposes, is occupied or used, in whole or in part, for any of said purposes, the weight that each floor will safely sustain upon each superficial foot thereof, shall be ascertained and posted in a conspicuous place on each story or varying parts of each story of the building to which it relates. No person shall place, or cause or permit to be placed on any floor of any building any greater load than the safe load thereof, as correctly estimated and ascertained as herein provided. Any expense necessarily incurred in removing any floor or other portion of any building for the purpose of making any examination herein provided for shall be paid by the comptroller of the city of New York, upon the requisition of the board of buildings, out of the fund paid over to said board under the provisions of section one hundred and fifty-eight of this code. Such expenses shall be a charge against the person or persons by whom or on whose behalf said estimate was made, provided such examination proves the floors of insufficient strength to carry with safety the loads found upon them when such examination was made; and shall be collected in an action to be brought by the corporation counsel against said person or persons, and the sum so collected shall be paid over to the said comptroller to be deposited in said fund in reimbursement of the amount paid as aforesaid. When the architect of record for any building has filed with his application to build the data required to determine the strength of floors, on one of the blank forms provided for that purpose, such examination shall not be required, provided that the purposes and uses of the building have not been changed.

**Strength of Temporary Supports.**

§ 133. Every temporary support placed under any structure, wall girder or beam, during the erection, finishing, alteration, or repairing of any building or structure or any part thereof, shall be of sufficient strength to safely carry the load to be placed thereon.

## PART XXIV.

### CALCULATIONS, STRENGTH OF MATERIALS.

**Safe Load for Masonry Work.**

§ 134. The safe-bearing load to apply to brickwork shall be taken at eight tons per superficial foot, when lime mortar is used; eleven and one-half tons per superficial foot when lime and cement mortar mixed is used; fifteen tons per superficial foot when cement mortar is used. The safe-bearing load to apply to rubble-stone work shall be taken at ten tons per superficial foot when Portland cement is used; when cement other than Portland is used, eight tons per superficial foot; when lime and cement mortar mixed is used, seven tons per superficial foot; and when lime mortar is used, five tons per superficial foot. The safe-bearing load to apply to concrete when Portland cement is used shall be taken at fifteen tons per superficial foot; and when cement other than Portland is used, eight tons per superficial foot.

**Weights of Certain Materials.**

§ 135. In computing the weight of walls, a cubic foot of brickwork shall be deemed to weigh one hundred and fifteen pounds. Sandstone, white marble, granite and other kinds of building stone shall be deemed to weigh one hundred and seventy pounds per cubic foot.

**Computations for Strength of Materials.**

§ 136. The dimensions of each piece or combination of materials required shall be ascertained by computation, according to the rules prescribed by this code.

**Factors of Safety.**

§ 137. Where the unit stress for any material is not prescribed in this code the relation of allowable unit stress to ultimate strength shall be as one to four for metals, subjected to tension or transverse stress; as one to six for timber, and as one to ten for natural or artificial stones and brick or stone masonry. But wherever working stresses are prescribed in this code, varying the factors of safety hereinabove given, the said working stresses shall be used.

**Strength of Columns.**

§ 138. In columns or compression members with flat ends of cast iron, steel, wrought iron or wood, the stress per square inch shall not exceed that given in the following tables:

| When the Length Divided by Least Radius of Gyration Equals: | Working Stresses per Sq. Inch of Section. | | |
|---|---|---|---|
| | Cast Iron. | Steel. | Wrought Iron. |
| 120 | ..... | 8,240 | 4,400 |
| 110 | ..... | 8,820 | 5,200 |
| 100 | ..... | 9,400 | 6,000 |
| 90 | ..... | 9,980 | 6,800 |
| 80 | ..... | 10,560 | 7,600 |
| 70 | 9,200 | 11,140 | 8,400 |
| 60 | 9,500 | 11,720 | 9,200 |
| 50 | 9,800 | 12,300 | 10,000 |
| 40 | 10,100 | 12,880 | 10,800 |
| 30 | 10,400 | 13,460 | 11,600 |
| 20 | 10,700 | 14,040 | 12,400 |
| 10 | 11,000 | 14,620 | 13,200 |

And in like proportion for intermediate ratios.

| When the Length Divided by the Least Diameter Equals: | Working Stresses per Sq. Inch of Section. | | |
|---|---|---|---|
| | Long L'f Yellow Pine. | White Pine, N'rway Pine, Spruce. | Oak |
| 30 | 460 | 350 | 390 |
| 25 | 550 | 425 | 475 |
| 20 | 640 | 500 | 560 |
| 15 | 730 | 575 | 645 |
| 12 | 784 | 620 | 696 |
| 10 | 820 | 650 | 730 |

And in like proportion for intermediate ratios. Five-eighths the values given for white pine shall also apply to chestnut and hemlock posts. For locust posts use one and one-half the value given for white pine.

Columns and compression members shall not be used having an unsupported length of greater ratios than given in the tables. Any column eccentrically loaded shall have the stresses caused by such eccentricity computed, and the combined stresses resulting from such eccentricity at any part of the column, added to all other stresses at that part, shall in no case exceed the working stresses stated in this code.

The eccentric load of a column shall be considered to be distributed equally over the entire area of that column at the next point below at which the column is securely braced laterally in the direction of the eccentricity.

**Working Stresses.**

§ 139. The safe carrying capacity of the various materials of construction (except in the case of columns) shall be determined by the following working stresses in pounds per square inch of sectional area:

Compression (Direct).

| | |
|---|---|
| Rolled steel | 16,000 |
| Cast steel | 16,000 |
| Wrought iron | 12,000 |
| Cast iron (in short blocks) | 16,000 |
| Steel pins and rivets (bearing) | 20,000 |
| Wrought iron pins and rivets (bearing) | 15,000 |

| | With grain. | Across grain. |
|---|---|---|
| Oak | 900 | 800 |
| Yellow pine | 1,000 | 600 |
| White pine | 800 | 400 |
| Spruce | 800 | 400 |
| Locust | 1,200 | 1,000 |
| Hemlock | 500 | 500 |
| Chestnut | 500 | 1,000 |

| | |
|---|---|
| Concrete (Portland) cement, 1; sand, 2; stone, 4. | 230 |
| Concrete (Portland) cement, 1; sand, 2; stone, 5. | 208 |
| Concrete, Rosendale, or equal, cement, 1; sand, 2; stone, 4 | 125 |
| Concrete, Rosendale, or equal, cement, 1; sand, 2; stone, 5 | 111 |
| Rubble stonework in Portland cement mortar | 140 |
| Rubble stonework in Rosendale cement mortar | 111 |
| Rubble stonework in lime and cement mortar | 97 |
| Rubble stonework in lime mortar | 70 |
| Brickwork in Portland cement mortar; cement, 1; sand, 3 | 250 |
| Brickwork in Rosendale or equal, cement mortar; cement, 1; sand, 3 | 208 |

| | |
|---|---|
| Brickwork in lime and cement mortar; cement, 1; lime, 1; sand, 6 | 160 |
| Brickwork, in lime mortar; lime, 1; sand, 4 | 111 |
| Granites (according to test) | 1,000 to 2,400 |
| Greenwich stone | 1,200 |
| Gneiss (New York City) | 1,300 |
| Limestones (according to test) | 700 to 2,300 |
| Marbles (according to test) | 600 to 1,200 |
| Sandstones (according to test) | 400 to 1,600 |
| Bluestone, North River | 2,000 |
| Brick (Haverstraw, flatwise) | 300 |
| Slate | 1,000 |

Tension (Direct).

| | |
|---|---|
| Rolled steel | 16,000 |
| Cast steel | 16,000 |
| Wrought iron | 12,000 |
| Cast iron | 3,000 |
| Yellow pine | 1,200 |
| White pine | 800 |
| Spruce | 800 |
| Oak | 1,000 |
| Hemlock | 600 |

Shear.

| | |
|---|---|
| Steel web plates | 9,000 |
| Steel shop rivets and pins | 10,000 |
| Steel field rivets | 8,000 |
| Steel field bolts | 7,000 |
| Wrought iron web plates | 6,000 |
| Wrought iron shop rivets and pins | 7,500 |
| Wrought iron field rivets | 6,000 |
| Wrought iron field bolts | 5,500 |
| Cast iron | 3,000 |

| | With fiber. | Across fiber. |
|---|---|---|
| Yellow pine | 70 | 500 |
| White pine | 40 | 250 |
| Spruce | 50 | 320 |
| Oak | 100 | 600 |
| Locust | 100 | 720 |
| Hemlock | 40 | 275 |
| Chestnut | .... | 150 |

Safe Extreme Fiber Stress (Bending).

| | |
|---|---|
| Rolled steel beams | 16,000 |
| Rolled steel pins, rivets and bolts | 20,000 |
| Riveted steel beams (net flange section) | 14,000 |
| Rolled wrought iron beams | 12,000 |
| Rolled wrought iron pins, rivets and bolts | 15,000 |
| Riveted wrought iron beams (net flange section) | 12,000 |
| Cast iron, compression side | 16,000 |
| Cast iron, tension side | 3,000 |
| Yellow pine | 1,200 |
| White pine | 800 |
| Spruce | 800 |
| Oak | 1,000 |
| Locust | 1,200 |
| Hemlock | 600 |
| Chestnut | 800 |
| Granite | 180 |
| Greenwich stone | 150 |
| Gneiss (New York City) | 150 |
| Limestone | 150 |
| Slate | 400 |
| Marble | 120 |
| Sandstone | 100 |
| Bluestone (North River) | 300 |
| Concrete (Portland) cement, 1; sand, 2; stone, 4. | 30 |
| Concrete (Portland) cement, 1; sand, 2; stone, 5. | 20 |
| Concrete (Rosendale, or equal) cement, 1; sand, 2; stone, 4 | 16 |
| Concrete (Rosendale, or equal) cement, 1; sand, 2; stone, 5 | 10 |
| Brick (common) | 50 |
| Brickwork (in cement) | 30 |

**Wind Pressure.**

§ 140. All structures exposed to wind shall be designed to resist a horizontal wind pressure of thirty pounds for every square foot of surface thus exposed, from the ground to the top of same, including roof, in any direction. In no case shall the overturning moment due to wind pressure exceed seventy-five per centum of the moment of stability of the structure. In all structures exposed to wind, if the resisting moments of the ordinary materials of construction, such as masonry, partitions, floors and connections are not sufficient to resist the moment of

distortion due to wind pressure, taken in any direction or any part of the structure, additional bracing shall be introduced sufficient to make up the difference in the moments. In calculations for wind bracing, the working stresses set forth in this code may be increased by fifty per centum. In buildings under one hundred feet in height, provided the height does not exceed four times the average width of the base, the wind pressure may be disregarded.

## PART XXV.

### PLUMBING AND DRAINAGE.

**Plumbing, Drainage and Repairs Thereto.**

§ 141. The drainage and plumbing of all buildings, both public and private, shall be executed in accordance with the rules and regulations of the department of buildings. Said rules and regulations and any change thereof shall be published in the "City Record" on eight successive Mondays before the same shall become operative. Repairs or alterations of such plumbing or drainage may be made without the filing and approval of drawings and descriptions in the department of buildings, but such repairs or alterations shall not be construed to include cases where new vertical or horizontal lines of soil, waste, vent or leader pipes are proposed to be used.

Notice of such repairs or alterations shall be given to the said department before the same are commenced in such cases as shall be prescribed by the rules and regulations of the said department, and the work shall be done in accordance with the said rules and regulations.

II. Once in each year, every employing or master plumber carrying on his trade, business or calling in The City of New York, shall register his name and address at the office of the department of buildings in said city under such rules and regulations as said department shall prescribe and as hereinafter provided.

And thereupon he shall be entitled to receive a certificate of such registration from said department, provided, however, that such employing or master plumber shall, at the time of applying for such registration, hold a certificate of competency from the examining board of plumbers of said city.

The time for making such registration shall be during the month of March in each year. Where, however, a person obtains a certificate of competency at a time other than in the month of March in any year, he may register within thirty days after obtaining such certificate of competency, but he must also register in the month of March in each year as herein provided.

Such registration may be cancelled by the department of buildings for a violation of the rules and regulations for the plumbing and drainage of said department of buildings, duly adopted

and in force pursuant to the provisions of this section, or whenever the person so registered ceases to be a master or employing plumber, after a hearing had before said department and upon a prior notice of not less than ten days, stating the grounds of complaint and served upon the person charged with the violation of the aforesaid rules and regulations.

III. After this code takes effect, no person, corporation or copartnership shall engage in or carry on the trade, business or calling of employing or master plumber in The City of New York, unless the name and address of such person and the president, secretary or treasurer of such corporation and each and every member of such copartnership shall have been registered as above provided.

IV. No person or persons shall expose the sign of "Plumber" or "Plumbing," or a sign containing words of similar import and meaning in The City of New York unless each person forming such a copartnership shall have obtained a certificate of competency from the examining board of plumbers, and shall have registered as herein provided.

A master or employing plumber within the meaning of this code is any person who hires or employs a person or persons to do plumbing work.

V. The inspectors of plumbing in the department of buildings, in addition to their other duties, shall ascertain whether the employing or master plumber having charge of the construction, repairing or alteration of any plumbing work performed in The City of New York is registered as herein provided, and if such person is not so registered, then such inspectors shall forthwith report to said department the name of said plumber.

VI. The commissioner of buildings having jurisdiction may present a petition to a justice of the supreme court or to a special term thereof for an order restraining the person so reported from acting as an employing or master plumber until he registers pursuant to the provisions of this code. Said petition shall state that the said person is engaged in plumbing work as an employing or master plumber without having so registered and shall be verified by the inspector making the said report.

Upon the presentation of the petition, the court shall grant an order requiring such plumber to appear before a special term of the supreme court on a date therein specified, not less than two or more than six days after the granting thereof, to show cause why he should not be permanently enjoined until he has obtained a certificate of registration as herein required. A copy of such petition and order shall be served upon such person not

less than twenty-four hours before the return thereof. On the day specified in such order the court before whom the same is returnable shall hear the proofs of the parties and may, if deemed necessary, take testimony in relation to the allegations of the petition.

If the court is satisfied that such plumber is practicing without having registered as provided by this code, an order shall be granted enjoining him from acting as an employing or master plumber until he has so registered.

No undertaking shall be required as a condition to the granting or issuing of such injunction order or by reason thereof.

If after the entry of such order in a county clerk's office in The City of New York such person shall, in violation of such order, practice as an employing or master plumber, he shall be deemed guilty of a criminal contempt of court, and be punishable as for a criminal contempt in the manner provided by the code of civil procedure.

In no case shall the department of buildings be liable for costs in any such proceeding, but costs may be allowed against the defendant or defendants in the discretion of the court.

## PART XXVI.

### BUILDINGS RAISED, LOWERED, ALTERED OR MOVED.

§ 142. Within the fire limits it shall not be lawful for the owner or owners of any brick dwelling-house with eight-inch walls or of any wood building already erected that has a peaked roof, to raise the same for the purpose of making a flat roof thereon, unless the same be raised with the same kind of material as the building, and unless such new roof be covered with fireproof material, and provided that such building, when so raised, shall not exceed forty feet in height to the highest part thereof. All such buildings must exceed twenty-five feet in height to the peak of the main roof before the said alteration and raising. In increasing the height of any such building the entire area which such building covers may be raised to a uniform height. If any such building has an extension of less width than the main building, the same may be increased in width to the full width of the main building, with the same kind of material and to the same height as the main building. Any such building may be extended either on the front or rear to a depth of not more than fifteen feet and not more than the width of the building, and not more than two stories and basement in height, with the same kind of material as the building. Any frame building situated in a row of frame buildings may be increased in height to conform to the height of adjoining buildings. If any block situated within the fire limits has ninety per cent. of the buildings, located thereon, constructed of frame, any vacant lot situated therein may have a frame building placed thereon, provided the same be not more than two stories and basement in height and is to be used for residence purposes only. If any building shall have been built before the street upon which it is located is graded, or if the grade is altered, such building may be raised or lowered to meet the requirements of such grade. The restrictions contained in this section shall not prohibit one story and basement frame dwelling houses from being increased one additional story in height. Within the fire limits no frame building more than two stories in height, now used as a dwelling, shall hereafter be raised or altered to be used as a factory, warehouse or stable.

No wood building within or without the fire limits shall be moved from one lot to another until a statement setting forth the purposes of said removal and the uses to which said building is to be applied is filed in the department of buildings, and a permit be first obtained therefor. No wood building shall be moved from without to within the fire limits.

Within the fire limits no brick building shall be enlarged or built upon unless the exterior walls of said addition or enlargement be constructed of incombustible materials; provided, however, that such brick building may be raised, lowered or altered under the same circumstances, and in the manner provided for in this section.

## PART XXVII.

### FIRE LIMITS.

**Fire Limits. No frame or wood structure shall be built hereafter in the City of New York within the following limits:**

§ 143. In the Borough of Manhattan: Within the following described lines:

Beginning at a point on the North River at the Battery and running thence northerly along the pier headline to a point one hundred feet north of the northerly side of One Hundred and Sixty-fifth street, and running thence easterly one hundred feet north of the northerly side of One Hundred and Sixty-fifth street to a point one hundred feet west of the westerly side of Broadway; thence northerly on a line drawn always one hundred feet west of the westerly side of Broadway to the bulkhead line of the Harlem River; thence southerly along the bulkhead line of the Harlem River to the Bronx Kills; thence easterly along the bulkhead line of the Bronx Kills to the East River; thence southerly along the East River, passing to the east of Blackwell's Island; and thence continuing by the pierhead line of the East River to the place of beginning.

In the Borough of The Bronx: Within the following described lines:

Beginning at a point on the eastern bulkhead line of the Harlem River one hundred feet south of East One Hundred and Sixty-first street, running thence easterly and parallel with East One Hundred and Sixty-first street to the east side of Sheridan avenue and one hundred feet therefrom; thence north on the east side of Sheridan avenue to a point one hundred feet north of the north line of East One Hundred and Sixty-first street; thence easterly and parallel to East One Hundred and Sixty-first street and one hundred feet therefrom, to a point one hundred feet west of Park avenue; thence northeasterly and parallel to Park avenue and one hundred feet therefrom to a point distant one hundred feet west of Webster avenue; thence northerly and parallel to Webster avenue and one hundred feet therefrom to a point one hundred feet northerly of East One Hundred and Seventy-seventh street; thence easterly and parallel to East One Hundred and Seventy-seventh street and one hundred feet there-

from to Third avenue; thence southerly along the westerly boundary line of Crotona Park, and thence easterly along the southerly boundary line of Crotona Park to a point distant one hundred feet east of Prospect avenue; thence along Prospect avenue and one hundred feet east therefrom to Westchester avenue; thence along Westchester avenue and one hundred feet east therefrom to a point one hundred feet east of the easterly line of Robbins avenue; thence southerly and parallel to Robbins avenue one hundred feet east therefrom to the Port Morris Branch Railroad; thence southeasterly along the Port Morris Branch Railroad to the East River; thence southwesterly along the East River, northwesterly along the Bronx Kills and northerly along the Harlem River to the point of beginning.

In the Borough of Brooklyn: Within the following described lines:

Beginning at a point formed by the intersection of Sixtieth street and New York bay; thence running easterly on a line drawn one hundred feet south of and parallel with the easterly side of Sixtieth street to Sixth avenue; thence running northerly on a line drawn one hundred feet east of and parallel with the easterly side of Sixth avenue to Thirty-sixth street; thence running westerly through the center line of Thirty-sixth street to Fifth avenue; thence running northerly through the center line of Fifth avenue to Twenty-fourth street; thence running easterly through the center line of Twenty-fourth street to Sixth avenue; thence running northerly through the center line of Sixth avenue to Twenty-third street; thence running easterly through the center line of Twenty-third street to Seventh avenue; thence running northerly through the center line of Seventh avenue to Twentieth street; thence running easterly through the center line of Twentieth street to Ninth avenue, or Prospect Park West; thence running northerly through the center line of Ninth avenue, or Prospect Park West, to Prospect avenue; thence running easterly through the center line of Prospect avenue to Eleventh avenue; thence running northerly through the center line of Eleventh avenue to Fifteenth street; thence running westerly through the center line of Fifteenth street to Ninth avenue, or Prospect Park West; thence northerly through the center line of Ninth avenue, or Prospect Park West, to Flatbush avenue; thence southerly along the center line of Flatbush avenue to Ocean avenue; thence southerly on a line drawn one hundred feet west of and parallel with the west side of Flatbush avenue to Avenue E; thence easterly through the center line of Avenue E to Flatbush avenue; thence northwesterly on a line drawn one hundred feet east of and parallel with the easterly

side of Flatbush avenue to Franklin avenue; thence northerly on a line drawn one hundred feet east of and parallel with the easterly side of Franklin avenue to Crown street; thence easterly on a line drawn one hundred feet south of and parallel with the southerly side of Crown street to East New York avenue; thence easterly on a line drawn one hundred feet south of and parallel with the southerly side of East New York avenue to Gillen place; thence northerly on a line drawn one hundred feet east of and parallel with the easterly side of Gillen place to Broadway; thence northerly on a line drawn one hundred feet east of and parallel with the east side of Broadway to Pilling street; thence easterly through the center line of Pilling street to Central avenue; thence northwesterly on a line drawn one hundred feet east of and parallel with the easterly side of Central avenue to Flushing avenue; thence westerly from a line drawn one hundred feet north of and parallel with the northerly side of Flushing avenue to Bushwick avenue; thence northerly on a line drawn one hundred feet east of and parallel with the easterly side of Bushwick avenue to Metropolitan avenue; thence westerly on a line drawn one hundred feet north of and parallel with the northerly side of Metropolitan avenue to Graham avenue; thence northerly on a line drawn one hundred feet east of and parallel with the easterly side of Graham avenue to Skillman avenue; thence westerly on a line drawn one hundred feet north of and parallel with the northerly side of Skillman avenue to Union avenue; thence northerly on a line drawn one hundred feet east of and parallel with the easterly side of Union avenue to North Ninth street; thence northwesterly on a line drawn one hundred feet northeast of and parallel with the northeasterly side of North Ninth street to Bedford avenue; thence easterly on a line drawn one hundred feet south of and parallel with the southerly side of Bedford avenue to North Eleventh street; thence northwesterly on a line drawn one hundred feet northeast of and parallel with the northeasterly side of North Eleventh street to the East River; thence to Van Brunt street; thence northeasterly on a line drawn one hundred feet east of and parallel with the easterly side of Van Brunt street to King street; thence southeasterly on a line drawn one hundred feet south of and parallel with the southerly side of King street to Columbia street; thence northeasterly on a line drawn one hundred feet east of and parallel with the easterly side of Columbia street to Luquer street; thence easterly on a line drawn one hundred feet south of and parallel with the southerly side of Luquer street to Hamilton avenue; thence southerly on a line drawn one hundred feet west of and parallel with the west side

of Hamilton avenue to Court street; thence southwesterly on a line drawn one hundred feet east of and parallel with the easterly side of Court street to Gowanus bay and New York bay to the point or place of beginning.

Also beginning at a point formed by the intersection of East River and Noble street; thence running easterly on a line drawn one hundred feet south of and parallel with the southerly side of Noble street to Lorimer street; thence southerly on a line drawn one hundred feet west of and parallel with the westerly side of Lorimer street to Nassau avenue; thence easterly on a line drawn one hundred feet south of and parallel with the southerly side of Nassau avenue to Oakland street; thence northerly on a line drawn one hundred feet east of and parallel with the easterly side of Oakland street to Newtown creek, to the East river, to the point or place of beginning.

In that part of the Twenty-ninth ward bounded by Coney Island avenue on the west, by New York avenue on the east and by the lines of said ward on the north and south, no row of two or more attached frame stores, dwellings or buildings shall be permitted to be erected; and no frame house or building shall be erected on any lot or building plot covering more than eighty per cent. in width of any such lot or building plot.

Resolved, That the department of buildings be and it hereby is requested to extend the fire limits in the Eighth Ward, Borough of Brooklyn, to include the territory between the south side of Forty-fifth street and the north side of Sixtieth street and the easterly side of Sixth avenue and the westerly side of Seventh avenue.

Any frame building erected hereafter in the territory included within the following boundary—all in the Thirtieth Ward of the Borough of Brooklyn—namely: Beginning at the Shore road and Bay Ridge avenue, along Bay Ridge avenue, including both sides of said avenue, to Fourteenth avenue; along Fourteenth avenue, including both sides, to Eighty-sixth street; along Eighty-sixth street, including both sides, to Third avenue; along Third avenue, including both sides, to Ninety-second street; along Ninety-second street, including both sides, to Shore road; along the said Shore road to the point of beginning—shall not occupy more than eighty (80) per cent. in width of the lot on which said building is erected.

In the Borough of Queens: Within the following described lines:

Bounded on the south by Newtown creek; on the north by the southerly line of Nott avenue; on the west by the East river, and on the east by the westerly line of Van Alst avenue.

## PART XXVIII.

### FRAME BUILDINGS.

**Frame Structures Within the Fire Limits.**

§ 144. The provisions, in this section contained, shall apply to buildings and structures, whether temporary or permanent, within the fire limits, as the said fire limits now are or may hereafter be established.

Temporary one-story frame buildings may be erected for the uses of builders, within the limits of lots whereon buildings are in course of erection, or on adjoining vacant lots, upon permits issued by the commissioner of buildings having jurisdiction.

Temporary structures shall be taken to mean and include platforms, stands, election booths, temporary buildings and circus tents.

Sheds of wood not over fifteen feet high, open on at least one side, with the sides and roof thereof covered with fireproof material, may also be built, but a fence shall not be used as the back or side thereof. Such sheds shall not cover an area exceeding two thousand five hundred square feet, except by permission of the board of buildings.

Fences, signs or bill-boards shall not be at any point over ten feet above the adjoining ground; except that when any fence, sign or bill-board shall be constructed entirely of metal or of wood covered on all sides with sheet metal, including the uprights, supports and braces for same, it shall not be at any point over eighteen feet six inches above the adjoining ground.

Any letter, word, model, sign, device or representation in the nature of an advertisement, announcement or direction, supported or attached, wholly or in part, over or above any wall, building or structure, shall be deemed to be a "sky sign."

Sky signs shall be constructed entirely of metal, including the uprights, supports and braces for same, and shall not be at any point over nine feet above the front wall or cornice of the building or structure to which they are attached or by which they are supported.

All fences, signs, bill-boards and sky signs shall be erected entirely within the building line, and be properly secured, supported and braced, and shall be so constructed as not to be or become dangerous.

Before the erection of any fence, sign, bill-board or sky sign shall have been commenced, a permit for the erection of the same shall be obtained from the superintendent of buildings having jurisdiction, as provided in part ii, section 4, of this code. Each application for the erection of any fence, sign, bill-board or sky sign shall be accompanied by a written consent of the owner or owners, or the lessee or lessees of the property upon which it is to be erected.

Piazzas or balconies of wood on buildings other than frame buildings which do not exceed eight feet in width, and which do not extend more than three feet above the second story floor beams, may be erected, provided a permit from the commissioner of buildings, having jurisdiction, be granted therefor. In connected houses such piazzas or balconies may be built, provided the same are open on the front and have brick ends not less than eight inches thick, carried up above the roof of such piazza or balcony, and coped with stone. The roofs of all piazzas shall be covered with some fireproof material. Frame buildings already erected may have placed on any story piazzas, balconies or bay-windows of wood, the roofs of which may be covered with the same material as the roof of the main building.

Exterior privies, and wood or coal-houses, not exceeding one hundred and fifty square feet in superficial area and eight feet high, may be built of wood, but the roofs thereof must be covered with metal, gravel or slate.

**Frame Buildings Damaged.**

§ 145. Every wood or frame building with a brick or other front within the fire limits, which may hereafter be damaged to an amount not greater than one-half of the value thereof exclusive of the valuation of the foundation thereof, at the time of such damage, may be repaired or rebuilt; but if such damage shall amount to more than one-half of such value thereof, exclusive of the value of the foundation, then such building shall not be repaired or rebuilt, but shall be taken down, except as provided in this code. In case the owner of the damaged building shall be dissatisfied with the decision of the commissioner of buildings having jurisdiction that such building is damaged to a greater extent than one-half of its value, exclusive of the value of the foundation, then the amount and extent of such damage shall be determined upon an examination of the building by one surveyor who shall be appointed by the commissioner of buildings having jurisdiction, and one surveyor who shall be appointed by the owner or owners of said premises. In

case these two surveyors do not agree, they shall appoint a third surveyor to take part in such examination, and a decision of a majority of them, reduced to writing and sworn to, shall be conclusive, and such building shall in no manner be repaired or rebuilt until after such decision shall have been rendered.

**Frame Buildings, Outside of Fire Limits.**

§ 146. The provisions of this section shall apply to frame or other buildings hereafter erected outside of the fire limits, as the same are now or may hereafter be established, in portions of The City of New York where streets are now and where they may hereafter be legally established. Three-story frame buildings may be erected to a height of forty feet, said height being taken from the curb-line, where same exists, at the centre of front or side of building on which main entrance to upper floors is located. Where the walls of a building do not adjoin the street or building line, then the average level of the ground on which the building stands may be taken in place of the curb-line. The measurement for height shall be to the highest point of roof-beams in case of flat-roof buildings, and to the average height of gable or roof in case of pitched roofs. Towers, turrets and minarets of wood may be erected to a height not to exceed fifteen feet greater than the foregoing limited height, except that the spires of churches may be erected of wood to a height not exceeding ninety feet from the ground. All footings or bottom stones shall be at least six inches wider on each side than bottom width of foundation walls above, except where the outside of the foundation wall sets on the property line, in which case six inches wider on the inside shall be sufficient. The thickness of footings shall be not less than eight inches, if of stone, and not less than twelve inches if of concrete.

Foundations for frame structures shall be laid not less than four feet below the finished surface of the earth or upon the surface where there is rock bottom, or upon piles or ranging timbers where found necessary. The foundation walls of frame structures exceeding fifteen feet in height, if of stone, shall be not less than eighteen inches thick, and, if of brick, not less than twelve inches to the grade and eight inches thick to the under side of the sill. If the foundation and first story walls are constructed of brick, the foundation walls shall be not less than twelve inches thick to the first tier of beams and eight inches thick from first tier to second tier of beams; or if these walls are constructed of stone they shall be not less than twenty inches for the foundation wall and eighteen inches for the first

story wall; and if the walls are faced with stone ashlar the total thickness shall be four inches greater than in this section specified. In the foundation walls there may be recesses not more than eight feet long for stairs, with brick walls not less than eight inches thick. All chimneys in frame buildings shall be built of brick or stone or other fireproof material. If of brick the flues shall have walls at least eight inches thick, except where flues are lined with burnt-clay pipe, in which case the walls around flues may be four inches thick. All flue linings shall extend at least one foot above the roof boards. Where chimneys are built of stone the walls of the flues shall be not less than eight inches on all sides, and shall be lined with burnt-clay pipe. All chimneys shall be topped out at least four feet above the highest point of contact with the roof, and be properly capped. Chimneys in party walls or serving two rooms on the same floor may be built in the walls or partitions; elsewhere, they shall be built inside of the frame, except in the case of ornamental or exposed chimneys. In no case shall a frame building be erected within three feet of the side or rear line of a lot, unless the space between the studs on any such side be filled in solidly with not less than two and one-half inches of brickwork or other fireproof material. When two or more such buildings are built continuous, the party or division studding shall be not less than four inches thick and filled in solidly with brickwork or other fireproof material extending to the under side of roof boards. When the division walls are of brick they shall be not less than eight inches thick above the foundation wall and extending to under side of roof boards, and the ends of the floor beams shall be so separated that four inches of brick will be between the beams where they rest on said walls. The sills of all frame dwellings, except where the first floor is used for store or business purposes, shall be not less than two feet above the ground to the under side of same. All frame or wood buildings exceeding a height of fifteen feet shall be built with sills, posts, girts, plates and rafters, all of suitable size and properly framed and braced with suitable studs or planks, set at proper distance apart; but this shall not prohibit the use of balloon-framing. The floor beams and rafters shall be not less than two inches in thickness. The covering of roof may be of shingle. The walls of light, vent and dumb-waiter shafts, whether exterior or interior, in frame buildings may be constructed of frame. Posts of locust or other hard wood and wood girders may be used instead of brick fore-and-aft partitions in cellars of frame buildings, and it shall not be necessary to use metal or wire lath for

the ceilings of cellars or lowest floors of any frame building. The cellar stairs in frame buildings may be placed directly under main stairs, and no brick wall shall be necessary to inclose the same; nor shall areas be required to be built across the front of frame buildings, except where the cellar or basement is used for living purposes. The regulations governing plumbing, drainage and heating, also steam and hot-air pipes and registers, where same extend through or along stud partitions, shall also apply to frame buildings. Frame buildings may be altered, extended, raised or repaired provided the new portions comply with the provisions of this section. No frame building exceeding three stories in height shall hereafter be erected to be occupied by more than six families, nor shall any frame building already erected, be altered to be occupied by more than six families, nor more than three stories in height. Outside of the fire limits, when any brick or stone building is to be erected of a class that could, under this code, be constructed of wood, the Commissioner of Buildings having jurisdiction is hereby authorized and directed to allow reasonable modifications of this code relating to brick buildings, in consideration of incombustible material being used for walls instead of wood.

**Frame Buildings; Where Streets Are Not Established.**

§ 147. Within portions of The City of New York where streets have not been or are not legally established and are outside of the prescribed fire limits, no building or structure other than small outhouses shall be erected without first filing plans and a detailed statement of the proposed construction and obtaining an approval therefor, as provided in Section 4 of this code. Within the said portions of The City of New York, hotels, tenement houses for occupancy by not more than six families, and places of public assembly may be built of wood, but shall in all other respects comply with the several provisions of this code relating to such structures; but for all other buildings or structures only so much of the requirements, regulations and restrictions of this code shall apply as in the opinion of the commissioner of buildings having jurisdiction may be necessary for safety and health. The purpose of this section is to permit greater freedom in construction and in plumbing and drainage of buildings in the outlying and undeveloped portions of The City of New York than in those portions where a street system has been adopted by the municipality or established by law.

## PART XXIX.

### APPEALS AND MODIFICATIONS OF LAW.

**The Board of Buildings.**

§ 148. Each commissioner of buildings shall have power, with the approval of the board, to vary or modify any rule or regulation of the board, or the provisions of chapter 12 of the Greater New York charter, or of any existing law or ordinance relating to the construction, alteration or removal of any building or structure erected or to be erected within his jurisdiction, pursuant to the provisions of section 650 of the Greater New York charter.

**Board of Examiners.**

§ 149. The board of examiners for the boroughs of Manhattan and the Bronx shall be constituted as prescribed by Section 649 of the Greater New York Charter. Each of said examiners shall take the usual oath of office before entering upon his duties. No member of said board shall pass upon any question in which he is pecuniarily interested. The said board shall meet as often as once in each week upon notice from the commissioner of buildings.

The members of said board of examiners, and the clerk of said board, shall each be entitled to and shall receive ten dollars for each attendance at a meeting of said board, to be paid by the comptroller from the annual appropriations to be made therefor upon the voucher of the commissioner of buildings for the Boroughs of Manhattan and the Bronx.

## PART XXX.

VIOLATIONS AND PENALTIES. COURTS HAVING JURISDICTION.

### Violations and Penalties.

Sec. 150. The owner or owners of any building, structure or part thereof, or wall, or any platform, staging or flooring to be used for standing or seating purposes where any violation of this code shall be placed, or shall exist, and any architect, builder, plumber, carpenter or mason who may be employed or assist in the commission of any such violation, and any and all persons who shall violate any of the provisions of this code or fail to comply therewith, or any requirement thereof, or who shall violate or fail to comply with, any order or regulation made thereunder, or who shall build in violation of any detailed statement of specifications or plans, submitted and approved thereunder, or of any certificate or permit issued thereunder, shall severally, for each and every such violation and non-compliance, respectively, forfeit and pay a penalty in the sum of fifty dollars. Except that any such person who shall violate any of the provisions of this code, as to the construction of chimneys, fire-places, flues, hot-air pipes and furnaces, or who shall violate any of the provisions of this code, with reference to the framing or trimming of timbers, girders, beams, or other woodwork in proximity to chimney flues or fire-places, shall forfeit and pay a penalty in the sum of one hundred dollars. But if any said violation shall be removed or be in process of removal within ten days after the service of a notice as hereinafter prescribed, the liability of such a penalty shall cease, and the corporation counsel, on request of the commissioner of buildings having jurisdiction, shall discontinue any action pending to recover the same, upon such removal or the completion thereof within a reasonable time. Any and all of the aforementioned persons who having been served with a notice as hereinafter prescribed, to remove any violation, or comply with any requirement of this code, or with any order or regulation made thereunder, shall fail to comply with said notice within ten days after such service or shall continue to violate any requirement of this code in the respect named in said notice shall pay a penalty of two hundred and fifty dollars. For the recovery of any said penalty or penalties an action may be brought in any municipal

court, or court of record, in said city in the name of The City of New York; and whenever any judgment shall be rendered therefor, the same shall be collected and enforced, as prescribed and directed by the code of civil procedure of the state of New York. The commissioner of buildings having jurisdiction, through the corporation counsel, is hereby authorized, in his discretion, good and sufficient cause being shown therefor, to remit any fine or fines, penalty or penalties, which any person or persons may have incurred, or may hereafter incur, under any of the provisions of this code; but no fine or penalty shall be remitted for any such violation until the violation shall have been removed. Said remission shall also operate as the remission of the costs obtained in such action.

**Courts Having Jurisdiction.**

§ 151. All courts of civil jurisdiction in The City of New York shall have cognizance of and jurisdiction over any and all suits and proceedings by this code authorized to be brought for the recovery of any penalty and the enforcement of any of the several provisions of this code, and shall give preference to such suits and proceedings over all others, and no court shall lose jurisdiction of any action by reason of a plea that the title to real estate is involved, provided the object of the action is to recover a penalty for the violation of any of the provisions of this code. The corporation counsel is authorized to institute any and all actions and proceedings, either legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this code, and all civil courts in said city are hereby invested with full legal and equitable jurisdiction to hear, try and determine all such actions and proceedings, and to make appropriate orders and render judgment therein according to law so as to give force and effect to the provisions of this code. Whenever the commissioner of buildings having jurisdiction is satisfied that any building or structure, or any portion thereof, or any drainage or plumbing, the erection, construction or alteration, execution or repair of which is regulated, permitted or forbidden by this code, is being erected, constructed, altered or repaired, or has been erected, constructed, altered or repaired, in violation of, or not in compliance with any of the provisions or requirements of this code, or in violation of any detailed statement of specifications or plans submitted and approved thereunder, or of any certificate or permit issued thereunder, or that any provision or requirement of this code, or any order or direction made thereunder has not been complied with, or that plans

and specifications for plumbing and drainage have not been submitted or filed as required by this code, the commissioner of buildings having jurisdiction may in his discretion, through the corporation counsel, institute any appropriate action or proceeding, at law or in equity, to restrain, correct or remove such violation, or the execution of any work thereon, or to restrain or correct the erection or alteration of or to require the removal of, or to prevent the occupation or use if, the building or structure erected, constructed or altered, in violation of, or not in compliance with any of the provisions of this code, or with respect to which the requirements of this code, or of any order or direction made pursuant to any provisions contained in this code, shall not have been complied with. In any such action or proceeding, The City of New York may, in the discretion of the commissioner of buildings having jurisdiction and on his affidavit setting forth the facts, apply to any court of record in said city, or to a judge or justice thereof, for an order enjoining and restraining all persons from doing or causing or permitting to be done, any work in or upon such building or structure, or in or upon such part thereof as may be designated in said affidavit, or from occupying or using said building or structure, or such portion thereof as may be designated in said affidavit, for any purpose whatever, until the hearing and determination of said action and the entry of final judgment therein. The court or judge or justice thereof, to whom such application is made, is hereby authorized forthwith to make any or all of the orders above specified, as may be required in such application, with or without notice, and to make such other or further orders or directions as may be necessary to render the same effectual. No officer of said department of buildings, acting in good faith and without malice, shall be liable for damages by reason of anything done in any such action or proceeding. No undertaking shall be required as a condition to the granting or issuing of such injunction order, or by reason thereof. All courts in which any suit or proceeding is instituted under this code, shall, upon the rendition of a verdict, report of a referee, or decision of a judge or justice, render judgment in accordance therewith; and the said judgment so rendered, shall be and become a lien upon the premises named in the complaint in any such action, to date from the time of filing in a county clerk's office in The City of New York, where the property affected by such action, suit or proceeding, is located, of a notice of lis pendens therein; which lien may be enforced against said property, in every respect, notwithstanding the same may be trans-

ferred subsequent to the filing of the said notice. Said notice of lis pendens shall consist of a copy of the notice issued by the commissioner of buildings having jurisdiction requiring the removal of the violation and a notice of the suit or proceedings instituted, or to be instituted thereon, and said notice of lis pendens may be filed at any time after the service of the notice issued by the commissioner of buildings as aforesaid, provided he may deem the same to be necessary, or is satisfied that the owner of the property is about to transfer the same to avoid responsibility for having violated the provisions of this code or some one of its provisions. Any notice of lis pendens filed pursuant to the provisions of this code, may be vacated and canceled of record, upon an order of a judge or justice of the court in which such suit or proceeding was instituted or is pending, or upon the consent in writing of the corporation counsel, and the clerk of the said county where such notice is filed, is hereby directed and required to mark any such notice of lis pendens and any record or docket thereof as vacated and canceled of record, upon the presentation and filing of a certified copy of an order as aforesaid or of the consent, in writing, of said corporation counsel. In no case shall the said department of buildings, or any officer thereof, or the corporation of The City of New York, or any defendant, be liable for costs in any action, suit or proceedings that may have been, or may hereafter be, instituted or commenced in pursuance of this code, unless specially ordered and allowed against any defendant or defendants by a court or justice, in the course of such action, suit or proceeding.

**Notice of Violations of Code; Service of Papers.**

§ 152. All notices of the violation of any of the provisions of this code, and all notices directing anything to be done, required by this code, and all other notices that may be required or authorized to be issued thereunder, including notice that any building, structure, premises, or any part thereof, are deemed unsafe or dangerous, shall be issued by the commissioner of buildings having jurisdiction, and shall have his name affixed thereto, and may be served by any officer or employee of the department of buildings or by any person authorized by the said department. All such notices, and any notice or order issued by any court in any proceeding instituted pursuant to this code to restrain or remove any violation, or to enforce compliance with any provision or requirement of this code, may be served by delivering to and leaving a copy of the same with any person or persons violating, or who may be liable under any of the several provi-

sions of this code, or to whom the same may be addressed, and if such person or persons cannot be found after diligent search shall have been made for him or them, then such notice or order may be served by posting the same in a conspicuous place upon the premises where such violation is alleged to have been placed or to exist, or to which such notice or order may refer, or which may be deemed unsafe or dangerous, which shall be equivalent to a personal service of said notice or order upon all parties for whom such search shall have been made. Such notice or order shall contain a description of the building, premises or property on which such violation shall have been put or may exist, or which may be deemed unsafe or dangerous, or to which such notice or order may refer. If the person or persons, or any of them, to whom said notice or order is addressed, do not reside in the State of New York, and have no known place of business therein, the same may be served by delivering to and leaving with such person or persons, or either of them, a copy of said notice or order, or if said person or persons cannot be found within said state after diligent search, then by posting a copy of the same in manner as aforesaid and depositing a copy thereof in a post office in The City of New York, inclosed in a sealed wrapper addressed to said person or persons at his or their last known place of residence, with the postage paid thereon; and said posting and mailing of a copy of said notice or order shall be equivalent to personal service of said notice or order.

## PART XXXI.

### UNSAFE BUILDINGS, SURVEYS, COURT PROCEEDINGS.

**Unsafe Buildings.**

§ 153. Any building or buildings, part or parts of a building, staging or other structure in The City of New York, that from any cause may now be, or shall at any time hereafter become dangerous or unsafe, may be taken down and removed or made safe and secure, in the manner following: Immediately upon such unsafe or dangerous building or buildings, or part or parts of a building, staging or structure being so reported by any of the officers of said department of buildings, the same shall be immediately entered upon a docket of unsafe buildings to be kept by the commissioner of buildings having jurisdiction; and the owner, or some one of the owners, executors, administrators, agents, lessees or any other person or persons who may have a vested or contingent interest in the same, may be served with a printed or written notice containing a description of the premises or structure deemed unsafe or dangerous, requiring the same to be made safe and secure, or removed, as the same may be deemed necessary by the commissioner of buildings having jurisdiction, which said notice shall require the person or persons thus served to immediately certify to the said commissioner his or their assent or refusal to secure or remove the same.

**Surveys on Unsafe Buildings.**

§ 154. If the person or persons so served with notice shall immediately certify his or their assent to the securing or removal of said unsafe or dangerous building, premises or structure, he or they shall be allowed until one o'clock P. M. of the day following the service of such notice, in which to commence the securing or removal of the same; and he or they shall employ sufficient labor and assistance to secure or remove the same as expeditiously as the same can be done; but upon his or their refusal or neglect to comply with any of the requirements of said notice so served a further notice shall be served upon the person or persons heretofore named, and in the manner heretofore prescribed, notifying him or them that a survey of the premises named in the said notice will be made at the time and place therein named, which time may not be less than twenty-four

hours nor more than three days from the time of the service of said notice, by three competent persons, one of whom shall be the commissioner of buildings having jurisdiction, or a superintendent of buildings, or an inspector, designated in writing by said commissioner, another of whom shall be an architect, appointed by the New York Chapter of the American Institute of Architects for the Boroughs of Manhattan, The Bronx and Richmond, and by the Brooklyn Chapter of the American Institute of Architects for the Boroughs of Brooklyn and Queens, depending upon the borough or boroughs in which the property is located, another of whom shall be appointed by the person or persons thus notified, and who shall be a practical builder or architect, upon whose neglect or refusal to appoint such surveyor, however, the said other two surveyors may make such survey; and in case of a disagreement of the latter, they shall appoint a third person to take part in such survey, who shall also be a practical builder or architect of at least ten years' practice, and the decision of the said surveyor shall be final; and that in case the said premises shall be reported unsafe or dangerous under such survey, the said report will be placed before a court therein named, having jurisdiction to the extent of $1,000, and that a trial upon the allegations and statements contained in said report, be the report of said surveyors more or less than is contained in the said notice of survey, will be had before said court, at a time and place therein named, to determine whether said unsafe or dangerous building or premises shall be repaired and secured or taken down and removed; and a report of such survey, reduced to writing, shall constitute the issue to be placed before the court for trial. A copy of said report of survey shall be posted on the building by the persons holding the survey, immediately on their signing the same. The architect appointed by the chapters of the American Institute of Architects as hereinbefore provided, who may act on any survey called in accordance with the provisions of this code, shall be entitled to, and receive the sum of twenty-five dollars, to be paid by the comptroller upon the voucher of the board of buildings. And a cause of action is hereby created for the benefit of The City of New York against the owner or owners of said building, staging or structure, and of the lot or parcel of land on which the same is situated, for the amount so paid with interest, which shall be prosecuted in the name of The City of New York, by the corporation counsel. The amount so collected shall be paid over to the comptroller in reimbursement of the amounts paid by him as aforesaid.

**Court Proceedings.**

§ 155. Whenever the report of any such survey, had as aforesaid, shall recite that the building, premises or structure thus surveyed is unsafe or dangerous, the corporation counsel of The City of New York shall at the time in the said notice named, place said notice and report before the judge or justice holding a special term of the court, in the said notice named, which said judge or justice shall immediately proceed to obtain and impanel a jury, and to the trial of said issue before said jury, whose verdict shall be exclusive and final, and shall try said issue without adjournment, except as may be necessary from day to day, giving precedence to the trial of this issue over every other business, and said judge or justice shall have power to impanel a jury, for that purpose from any jurors in attendance upon said court, or in case sufficient jurors shall not be in attendance, then from any jurors that may be summoned for that purpose; and said judge or justice shall have power to summon jurors for that purpose; and any such suit or proceeding commenced before a judge or justice may be continued before another judge or justice of the same court; a jury trial may be waived by the default of the defendant or defendants to appear at the time and place named in the said notice, or by agreement, and in such case the trial may be by court, judge, justice, or referee, whose report or decision in the matter shall be final; and upon the rendition of a verdict or decision of the court, judge, justice, or referee, if the said verdict or decision shall find the said building, premises or structure to be unsafe or dangerous, the judge or justice trying said cause, or to whom the report of the referee trying said cause shall be presented, shall immediately issue a precept out of said court, directed to the commissioner of buildings, having jurisdiction, reciting said verdict or decision, and commanding him forthwith to repair and secure or take down or remove, as the case may be, in accordance with said verdict or decision, said unsafe or dangerous building, buildings, part or parts thereof, staging, structure or other premises that shall have been named in the said report; and said commissioner of buildings shall immediately thereupon proceed to execute said precept as therein directed, and may employ such labor and assistance and furnish such materials as may be necessary for that purpose, and after having done so, said commissioner of buildings shall make return of said precept, with an indorsement of the action thereunder and the cost and expenses thereby incurred, to the judge or

justice then holding the said special term of the said court, and thereupon said judge or justice shall tax and adjust the amount indorsed upon said precept, and shall adjust and allow disbursements of said proceeding, together with the preliminary expenses of searches and surveys, which shall be inserted in the judgment in said action or proceeding, and shall render judgment for such amount, and for the sale of the said premises in the said notice named, together with all the right, title and interest that the person or persons, or either of them, named in the said notice had in the lot, ground or land upon which the said building or structure was placed, at the time of the filing of a notice of lis pendens in the said proceedings, or at the time of the entry of judgment herein to satisfy the same, which shall be in the same manner and with like effect as sales under judgment in foreclosure of mortgages; and in and about all preliminary proceedings, as well as the carrying into effect any order of the court or any precept issued by any court, said commissioner of buildings may make requisition upon the comptroller of The City of New York for such amount or amounts of money as shall be necessary to meet the expenses thereof; and upon the same being approved by any judge or justice of the court from which the said order or precept was issued and presented to said comptroller, he shall pay the same, and for that purpose shall borrow and raise, upon revenue bonds, to be issued as provided in section one hundred and eighty-eight of the Greater New York Charter, the several amounts that may from time to time be required, which shall be reimbursed by the payment of the amount and interest at six per cent. out of the judgment or judgments obtained as aforesaid, if the same shall be collected. In case said issue shall not be tried at the time specified in said notice, or to which the trial may be adjourned, the same may be brought to trial at any time thereafter by the said commissioner of buildings, without a new survey, upon not less than three days' notice of trial to the person or persons upon whom the original notice was served, or to his or their attorney, which notice of trial may be served in the same manner as said original notice. The notice of lis pendens provided for in this section shall consist of a copy of said notice of survey, and shall be filed in the office of a county clerk in The City of New York, in the county where the property affected by such action, suit or proceeding is located. Provided, nevertheless, that immediately upon the issuing of said precept, the owner or owners of said building, staging or structure, or premises, or any party interested therein, upon application to the commissioner of build-

ings, shall be allowed to perform the requirements of said precept at his or their own proper cost and expense, provided the same shall be done immediately and in accordance with the requirements of said precept, upon the payment of all costs and expenses incurred up to that time, and provided, further, that the commissioner of buildings having jurisdiction shall have authority to modify the requirements of said precept upon application to him therefor, in writing, by the owner or owners of said building, staging or structure, or his or their representative, when he shall be satisfied that such change shall secure equally well the safety of said building, staging or structure.

**Application for Order to Remove Violations and to Vacate Buildings.**

§ 156. In case any notice or direction authorized to be issued by this code is not complied with within the time designated in said notice, The City of New York by the corporation counsel may, at the request of the commissioner of buildings having jurisdiction, apply to the supreme court of New York, at a special term thereof, for an order directing said commissioner to proceed to make the alterations or remove the violation or violations, as the same may be specified in said notice or direction. Whenever any notice or direction so authorized, shall have been served as directed in this code, and the same shall not have been complied with within the time designated therein, the corporation counsel may at the request of the commissioner of buildings having jurisdiction, in addition to, or in lieu of the remedy last above provided, apply to the supreme court of New York, at a special term thereof, for an order directing the said commissioner to vacate such building or premises, or so much thereof as said commissioner may deem necessary, and prohibiting the same to be used or occupied for any purpose specified in said order until such notice shall have been complied with. The expenses and disbursements incurred in the carrying out of any said order or orders, shall become a lien upon said building or premises named in the said notice, from the time of filing of a copy of the said notice, with a notice of the pendency of the action or proceeding as provided in this code, taken thereunder, in the office of the clerk of the county where the property affected by such action, suit or proceeding is located; and the said supreme court, or a judge or justice thereof, to whom application shall be made, is hereby authorized and directed to grant any of the orders above named, and to take such proceedings as shall be necessary to make the same effectual, and any said judge or

justice to whom application shall be made is hereby authorized and directed to enforce such lien in accordance with the mechanics lien laws applicable to The City of New York; and in case any of the notices herein mentioned shall be served upon any lessee or party in possession of the building or premises therein described, it shall be the duty of the person upon whom such service is made to give immediate notice to the owner or agent of said building named in the notice, if the same shall be known to the said person personally, if such person shall be within the limits of The City of New York, and his residence known to such person, and if not within said city, then by depositing a copy of said notice in any post office in The City of New York, properly inclosed and addressed to such owner or agent, at his then place of residence, if known, and by paying the postage thereon; and in case any lessee or party in possession shall neglect or refuse to give such notice as herein provided, he shall be personally liable to the owner or owners of said building or premises for all damages he or they shall sustain by reason thereof.

## PART XXXII.

### RECOVERY OF BODIES UNDER FALLEN BUILDINGS.

§ 157. In case of the falling of any building or part thereof in The City of New York, where persons are known or believed to be buried under the ruins thereof, it shall be the duty of the fire department to cause an examination of the premises to be made for the recovery of the bodies of the killed and injured. Whenever, in making such examination, it shall be necessary to remove from the premises any debris, it shall be the duty of the commissioners of the department of docks, of the department of parks, of the department highways, and of the department of street cleaning, when called upon by the department of buildings to co-operate, to provide a suitable and convenient dumping place for the deposit of such debris. In case there shall be in the opinion of the department of buildings, actual and immediate danger of the falling of any building or part thereof so as to endanger life or property, said department shall cause the necessary work to be done to render said building or part thereof temporarily safe until the proper proceedings can be taken as in the case of an unsafe building as provided for in this code. The department of buildings is hereby authorized and empowered in such cases, and also where any building or part thereof has fallen, and life is endangered by the occupation thereof, to order and require the inmates and occupants of such building or part thereof to vacate the same forthwith, and said department may, when necessary for the public safety, temporarily close the sidewalks and streets adjacent to such building or part thereof, and prohibit the same from being used, and the police department, when called upon by the said department of buildings, to cooperate shall enforce such orders or requirements. For the aforesaid purposes the said fire department, or the department of buildings, as the case may be, shall employ such laborers and materials as may be necessary to perform said work as speedily as possible.

§ 157A. In case there shall be, in the opinion of the borough president or superintendent of buildings in any borough having jurisdiction, danger to life or property by reason of any defective or illegal work, or work in violation of or not in compliance with any of the provisions or requirements of this code, the

said borough president or superintendent of buildings or such person as may be designated by him shall have the right and he is hereby authorized and empowered to order all further work to be stopped in and about said building and to require all persons in and about said building forthwith to vacate the same, and to cause such work to be done in and about the building as in his judgment may be necessary to remove any danger therefrom. And said borough president or superintendent of buildings may, when necessary for the public safety, temporarily close the sidewalks and the streets adjacent to said building, or part thereof, and the police department, when called upon by the said borough president or superintendent of buildings to co-operate, shall enforce such orders or requirements.

Adopted by the board of aldermen, May 31, 1904.

Approved by the mayor, June 7, 1904.

## PART XXXIII.

### FUND FOR USE AND BENEFIT OF THE DEPARTMENT OF BUILDINGS.

§ 158. The corporation counsel shall sue for and collect all penalties and take charge of and conduct all legal proceedings imposed or provided for by this code; and all suits or proceedings instituted for the enforcement of any of the several provisions of the preceding sections of this code or for the recovery of any penalty thereunder shall be brought in the name of the city of New York, by the corporation counsel, to whom all notices of violation shall be returned for prosecution, and it shall be his duty to take charge of the prosecution of all such suits or proceedings, collect and receive all moneys that may be collected upon judgments, suits or proceedings so instituted, or which may be paid by any parties who have violated any of the provisions of this code and upon settlement of judgment and removal of violations thereunder, execute satisfaction therefor. He shall on the first day of each and every month render to each commissioner of buildings an account of and pay over to the commission having jurisdiction, the amount of such penalties and costs received by him together with his bill for all necessary disbursements incurred or paid in said suits, keeping a separate account for each commissioner, and each commissioner shall pay over monthly the amount of such penalties and costs so collected to the comptroller of the city of New York as a fund for the use and benefit of the department of buildings for the purpose of paying any expense incurred by said department, under section one hundred and fifty-seven of this code, and also for the purpose of carrying into effect any order or precept issued by any court, or judge or justice thereof, in this code named, to any commissioner of buildings, and upon the requisition of the commissioner of buildings having jurisdiction, said comptroller shall pay such sum or sums as may be allowed and adjusted by any court of record, or a judge or justice thereof, for such purposes, as far as the same may be in his hands. A separate account shall be kept by the comptroller of the moneys paid to him by each commissioner, and no such moneys shall be paid for such purposes to any of said commissioners except from the account of the funds received from him.

## PART XXXIV.

SEAL, OFFICERS OF DEPARTMENT MAY ENTER BUILDINGS.

### Seal.

§ 159. The board of buildings may adopt a seal and direct its use in the department of buildings.

### Officers of Department May Enter Buildings.

§ 160. All the officials of the department of buildings, so for as it may be necessary for the performance of their respective duties, have the right to enter any building or premises in said city, upon showing their badge of office.

## PART XXXV.

EXISTING SUITS AND LIABILITIES. INVALIDITY OF ONE SECTION NOT TO INVALIDATE ANY OTHER.

### Existing Suits and Liabilities.

§ 161. Nothing in this code contained shall be construed to affect any suit or proceeding now pending in any court, or any rights acquired, or liability incurred, nor any cause or causes of action accrued or existing, under any act or ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired or affected by this code.

### Invalidity of One Section Not to Invalidate Any Other.

§ 162. The invalidity of any section or provision of this code shall not invalidate any other section or provision thereof.

## PART XXXVI.

ORDINANCES REPEALED. DATE WHEN ORDINANCE TAKES EFFECT.

### Repealing Section.

§ 163. All ordinances of the former municipal and public corporations consolidated into the city of New York affecting or relating to the construction, alteration or removal of buildings or other structures, and all other ordinances or parts thereof inconsistent herewith are hereby repealed.

### Date When Ordinance is to Take Effect.

§ 164. This ordinance shall take effect sixty days after its approval by the mayor.

## RULES AND REGULATIONS FOR PLUMBING, DRAINAGE, WATER SUPPLY AND VENTILATION OF BUILDINGS.

**NOTE — Matter underlined applies to Brooklyn, but not to Manhattan. Matter in brackets applies to Manhattan, but not to Brooklyn. Unless otherwise indicated, regulations apply to both Brooklyn and Manhattan.**

### I.

FILINGS OF DRAWINGS, DESCRIPTIONS, ETC.

1. Drawings and triplicate descriptions, on forms furnished by the bureau of buildings for all plumbing and drainage, shall be filled in with ink and filed by the owner or architect in the said bureau. The plans must be drawn to scale in ink, on cloth, or they must be cloth prints of such scale drawings, and shall consist of such floor plans and sections as may be necessary to show clearly all plumbing work to be done, and must show partitions and method of ventilating water closet apartments.

2. The said plumbing and drainage shall not be commenced or proceeded with until said drawings and descriptions shall have been so filed and approved by the superintendent of buildings.

3. No modification of the approved drawings and descriptions will be permitted unless either amended drawings and triplicate descriptions or an amendment to the original drawings and descriptions, covering the proposed change or changes, are so filed and approved by the superintendent of buildings.

4. The drainage and plumbing of all buildings, both public and private, shall be executed in accordance with the rules and regulations of the bureau of buildings.

5. Repairs or alterations of plumbing or drainage may be made without filing drawings and descriptions in the bureau of buildings, but such repairs or alterations shall not be construed to include cases where new vertical or horizontal lines of soil, waste, vent or leader pipes are proposed to be used.

6. Notice of such repairs or alterations shall be given to the said bureau before the same are commenced in such cases as shall be prescribed by the rules and regulations of the said bureau, and the work shall be done in accordance with the said rules and regulations.

7. Where repairs or alterations ordered by the board of health for sanitary reasons include cases where new vertical and horizontal lines of soil, waste, vent or leader pipes are proposed to be used or old ones replaced, drawings and descriptions must be filed with and approved by the superintendent of buildings before the same shall be commenced or proceeded with.

8. Repairs and alterations may comply in all respects with the weight, quality, arrangement and venting of the rest of the work in the building.

9. It shall not be lawful to commence work on said plumbing and drainage or on any part thereof until the plumber who is to do the work shall sign the specifications and make affidavit that he is duly authorized to proceed with the work. Affidavit must give the name and address of owner and plumber, etc.

10. One set of specifications will be received for not more than ten houses, and then only when on adjoining lots and houses are exactly alike.

11. Written notices must be given to the superintendent of buildings by the plumber when any work is begun, and from time to time when any work is ready for inspection. All notices required must be sent in on blank forms furnished by the bureau of buildings.

## II.

### DEFINITION OF TERMS.

12. The term "private sewer" is applied to main sewers that are not constructed by and under the supervision of the bureau of sewers.

13. The term "house sewer" is applied to that part of the main drain or sewer extending from a point two feet outside of the outer wall of the building, vault or area, to its connection with public sewer, private sewer or cesspool.

14. The term "house drain" is applied to that part of the main horizontal drain and its branches inside the walls of the building, vault or area, and extending to and connecting with the house sewer.

15. The term "soil-pipe" is applied to any vertical line of pipe extending through roof, receiving the discharge of one or more water-closets, with or without other fixtures.

16. The term "waste-pipe" is applied to any pipe, extending through roof, receiving the discharge from any fixtures except water-closets.

17. The term "vent-pipe" is applied to any special pipe provided to ventilate the system of piping and to prevent trap siphonage and back pressure.

## III.

### MATERIALS AND WORKMANSHIP.

18. All materials must be of the best quality, free from defects, and all work must be executed in a thorough, workmanlike way.

19. All cast-iron pipes and fittings must be uncoated, sound, cylindrical and smooth, free from cracks, sand holes and other defects, and of uniform thickness and of the grade known in commerce as "extra heavy."

20. Pipe, including the hub, shall not weigh not less than the following average weights per linear foot:

| Diameters. | Weights per linear foot. |
|---|---|
| 2 inches | 5½ pounds |
| 3 inches | 9½ " |
| 4 inches | 13 " |
| 5 inches | 17 " |
| 6 inches | 20 " |
| 7 inches | 27 " |
| 8 inches | 33½ " |
| 10 inches | 45 " |
| 12 inches | 54 " |

21. The size, weight and maker's name must be cast on each length of the pipe.

22. All joints must be made with picked oakum and molten lead and be made gastight. Twelve (12) ounces of fine, soft pig lead must be used at each joint for each inch in the diameter of the pipe.

23. All wrought-iron and steel pipes must be equal in quality to "standard," and must be properly tested by the manufacturer. All pipe must be lap-welded. No plain, black or uncoated pipe will be permitted.

24. Wrought-iron and steel pipes must be galvanized, and each length must have the weight and maker's name stamped on it.

25. Fittings for vent-pipes on wrought-iron and steel pipes may be the ordinary cast or malleable steam and water fittings.

26. Fittings for waste or soil and refrigerator waste-pipes must be special extra heavy cast-iron recessed and threaded drainage fittings with smooth interior waterway and threads tapped, so as to give a uniform grade to branches of not less than one-fourth of an inch per foot. All fittings for wrought-iron or steel pipe must be galvanized.

27. All joints to be screwed joints made up with red lead, and the burr formed in cutting must be carefully reamed out.

28. Short nipples on wrought-iron or steel pipe, where the unthreaded part of the pipe is less than one and one-half inches long, must be of the thickness and weight known as "extra heavy" or "extra strong."

29. The pipe shall not be less than the following average thickness and weight per linear foot:

| Diameter. | Thicknesses. (inches.) | Weights per linear foot (pounds). |
|---|---|---|
| 1½ inches | .14 | 2.68 |
| 2 inches | .15 | 3.61 |
| 2½ inches | .20 | 5.74 |
| 3 inches | .21 | 7.54 |
| 3½ inches | .22 | 9.00 |
| 4 inches | .23 | 10.66 |
| 4½ inches | .24 | 12.34 |
| 5 inches | .25 | 14.50 |
| 6 inches | .28 | 18.76 |
| 7 inches | .30 | 23.27 |
| 8 inches | .32 | 28.18 |
| 9 inches | .34 | 33.70 |
| 10 inches | .36 | 40.06 |
| 11 inches | .37 | 45.02 |
| 12 inches | .37 | 48.98 |

30. All brass pipes for soil, waste and vent pipes and solder nipples must be thoroughly annealed, seamless, drawn brass tubing, of standard iron-pipe gauge.

31. Connections on brass pipe and between brass pipe and traps on iron pipe must not be made up with slip joints or couplings. Threaded connections on brass pipe must be of the same size as iron-pipe threads for same size of pipe, and be tapered.

32. The following average thicknesses and weights per linear foot will be required.

| Diameters. | Thicknesses. | Weights per linear foot. |
|---|---|---|
| 1½ inches | .14 inches. | 2.84 pounds. |
| 2 " | .15 " | 3.82 " |
| 2½ " | .20 " | 6.08 " |
| 3 " | .21 " | 7.92 " |
| 3½ " | .22 " | 9.54 " |
| 4 " | .23 " | 11.29 " |
| 4½ " | .24 " | 13.08 " |
| 5 " | .25 " | 15.37 " |
| 6 " | .28 " | 19.88 " |

33. Brass ferrules must be best quality, bell shaped, extra heavy cast brass, not less than four inches long and two and one-quarter, three and one-half inches, and four and one-half inches in diameter, and not less than the following weights:

| Diameters. | Weights. |
|---|---|
| 2¼ inches | 1 pound 0 ounces. |
| 3½ " | 1 " 12 " |
| 4½ " | 2 pounds 8 " |

34. One and one-half inch ferrules are not permitted.

35. Soldering nipples must be heavy cast brass or of brass pipe, iron pipe size. When cast they must not be less than the following weights:

| Diameters. | Weights. |
|---|---|
| 2½ inches | 0 pounds 8 ounces |
| 2 " | 0 " 14 " |
| 2½ " | 1 pound 6 " |
| 3 " | 2 pounds 0 " |
| 4 " | 3 " 8 " |

36. Brass screw caps for cleanouts must be extra heavy, not less than one-eighth of an inch thick. The screw cap must have a solid square or hexagonal nut, not less than one inch high, with a least diameter of one and one-half inches. The body of the cleanout ferrule must be at least equal in weight and thickness to the calking ferrule for the same size of pipe.

37. Where cleanouts are required by rules and by the approved plans, the screw cap must be of brass. The engaging parts must have not less than six threads of iron pipe size and be tapered. Cleanouts must be of full size of trap up to four inches in diameter, and not less than four inches for larger traps.

38. The use of lead pipes is restricted to the short branches of the soil and waste-pipes, bends and traps, and roof connections of inside leaders. "Short branches" of lead pipe be construed to mean not more than:

5 feet of 1½-inch pipe.
4 feet of 2-inch pipe.
2 feet of 3-inch pipe.
2 feet of 4-inch pipe.

39. All connections between lead pipes and between brass or copper pipes must be made by means of wiped soldered joints, and all floor flanges of all sanitary fixtures and all connections between said fixtures and waste or soil pipes, where said connections are on outlet or sewer side of trap, shall be made without the use of red lead, putty, plaster, cement or any other similar substance.

40. All lead waste soil, vent and flush pipes must be of the best quality, known in commerce as "D," and of not less than the following weights per linear foot:

| | Weights per linear foot. |
|---|---|
| 1¼ inches (for flush pipes only) | 2½ pounds |
| 1½ inches | 3 " |
| 2 inches | 4 " |
| 3 inches | 6 " |
| 4 and 4½ inches | 8 " |

41. All lead traps and bends must be of the same weight and thickness as their corresponding pipe branches. Sheet lead for roof flashings must be six-pound lead and must extend not less than six inches from the pipe and the joint made water-tight.

42. Copper tubing when used for inside leader roof connections must be seamless drawn tubing, not less than 22-gauge, and when used for roof flashings must not be less than 18-gauge.

## IV.

### GENERAL REGULATIONS.

43. The entire plumbing and drainage system of each building must be entirely separate and independent of that of any other building.

44. Each building must be separately and independently connected with a public or private sewer, or cesspool.

45. Every building must have its sewer connections directly in front of the building, unless permission is otherwise granted by the superintendent of buildings.

46. Where there is no sewer in the street or avenue, and it is possible to construct a private sewer to connect in an adjacent street or avenue, a private sewer must be constructed. It must be laid outside the curb, under the roadway of the street.

47. Cesspools and privy-vaults will be permitted only after it has been shown to the satisfaction of the superintendent of buildings that their use is absolutely necessary.

48. When allowed, they must be constructed strictly in accordance with the terms of the permit issued by the superintendent of buildings.

49. Cesspools must not be used as privy-vaults. Cesspools and privy-vaults must be at least twenty-five feet from any building and should be on the same lot with the building for which its use is intended. Cesspools and privy-vaults, when constructed of brick, must be eight inches thick; of stone, twenty inches thick.

50. All cesspools and privy-vaults must be made water-tight.

51. As soon as it is possible to connect with a public sewer the owner must have the cesspool and privy-vault emptied, cleaned and disinfected and filled with fresh earth and have a sewer connection made in the manner herewith prescribed.

52. All pipe lines must be supported at the base on brick piers or by heavy iron hangers from the cellar-ceiling beams, and along the line by heavy iron hangers at intervals of not more than ten feet.

53. All pipes issuing from extension or elsewhere, which would otherwise open within thirty feet of the window of any building, must be extended above the highest roof and well away and above all windows.

54. The arrangement of all pipes must be as straight and direct as possible. Offsets will be permitted only when unavoidable.

55. All pipes and traps should, where possible, be exposed to view. They should always be readily accessible for inspection and repairing.

56. In every building where there is a leader connected to the drain, if there are any plumbing fixtures, there must be at least one four (4) inch pipe extending above the roof for ventilation.

## V.

### YARD, AREA AND OTHER DRAINS.

57. All yards, areas and courts must be drained.

58. Lodging-houses must have their yards, areas and courts drained into the sewer.

59. These drains, when sewer connected, must have connections not less than three inches in diameter. They should be controlled by one trap — the leader trap if possible.

60. Cellar drains must be permitted only where they can be connected to a trap with a permanent water seal.

61. Subsoil drains should discharge into a sump or receiving tank, the contents of whuch must be lifted and discharged into the drainage system above the cellar bottom by some approved method. Where directly sewer connected they must be cut off from the rest of the plumbing system by a brass flap valve on the inlet of the catch-basin, and the trap on the drain from the catch-basin must be water supplied, as required for cellar drains.

62. Floor or other drains will only be permitted when it can be shown to the satisfaction of the superintendent of buildings that their use is absolutely necessary and arrangements made to maintain a permanent water seal in the traps.

## VI.

### LEADERS.

63. All buildings shall be kept provided with proper metallic leaders for conducting water from the roofs in such manner as shall protect the walls and foundations of said buildings from injury. In no case shall the water from said leaders be allowed to flow upon the sidewalk, but the same shall be conducted by pipe or pipes to the sewer. If there be no sewer in the street upon which such buildings front, then the water from said leader shall be conducted by proper pipe or pipes below the surface of the sidewalk to the street gutter.

64. Inside leaders must be made of cast iron, wrought iron or steel, with roof connections made gas and water tight by means of a heavy lead or copper-drawn tubing wiped or soldered to a brass ferrule or nipple calked or screwed into the pipe.

65. Outside leaders may be of sheet metal, but they must connect with the house-drain by means of a cast iron pipe extending vertically five feet above grade level.

66. Leaders must be trapped with cast iron running traps so placed as to prevent freezing.

67. Rain water leaders must not be used as soil, waste or vent pipes, nor shall any such pipe be used as a leader.

## VII.

### THE HOUSE SEWER, HOUSE DRAIN, HOUSE TRAP AND FRESH-AIR INLET.

68. Old house sewers can be used in connection with the new buildings or new plumbing only when they are found, on examination by the plumbing inspector, to conform in all respects to the requirements governing new sewers.

69. When a proper foundation, consisting of a natural bed of earth, rock, etc., can be obtained, the house sewer can be of earthenware pipe.

70. Where the ground is made or filled in, or where the pipes are less than three feet deep, or in any case where there is danger of settlement by frost or from any cause, and when cesspools are used, the house sewer must be of extra heavy cast iron pipe, with lead-calked joints.

71. The house drain and its branches must be of extra heavy cast iron, when underground, and extra heavy cast iron or galvanized wrought iron or steel when above ground.

72. The house drain must properly connect with the house sewer at a point two feet outside of the outer front vault or area wall of the building. An arched or other proper opening must be provided for the drain in the wall to prevent damage by settlement.

73. If possible, the house drain must be above the cellar floor. The house drain must be supported at intervals of ten feet by eight-inch brick piers or suspended from the floor beams, or be otherwise properly supported by heavy iron pipe hangers at intervals of not more than ten feet. The use of pipe hooks for supporting pipe drains is prohibited.

74. No steam-exhaust, boiler, blow-off or drip pipe shall be connected with the house drain or sewer. Such pipes must first discharge into a proper condensing tank, and from this a proper outlet to the house sewer outside of the building must be provided. In low pressure steam systems the condensing tank may be omitted, but the waste connection must be otherwise as above required.

75. The house drain and house sewer must be run as direct as possible, with a fall of at least one-quarter inch per foot, all changes in direction made with proper fittings, and all connections with Y branches and one-eighth and one-sixteenth bends.

76. The house sewer and house drain must be at least four inches in diameter where water-closets discharge into them. Where rain water discharges into them the house sewer and house drain up to the leader connections must be in accordance with the following table:

| Diameters. | Fall ¼ inch per ft. (sq. ft.) | Fall ½ inch per ft. (sq. ft. drainage of area.) |
|---|---|---|
| 3 inches | 5,000 | 7,500 |
| 7 inches | 6,900 | 10,300 |
| 8 inches | 9,100 | 13,600 |
| 9 inches | 11,600 | 17,400 |

77. Full size Y and T branch fittings for handhole cleanouts must be provided where required on house drain and its branches.

78. An iron running trap must be placed on the house drain near the wall of the house, and on the sewer side of all connections, except a drip-pipe where one is used. If placed outside the house or below the cellar floor, it must be made accessible in a brick manhole, the walls of which must be eight inches thick, with an iron or flagstone cover. When outside the house it must never be less than three feet below the surface of the ground.

The house trap must have two cleanouts with brass screw cap ferrules calked in.

79. A fresh-air inlet must be connected with the house drain just inside of the house trap; when under ground it will be of extra heavy cast iron. [No fresh-air inlet to be used unless it has been approved on or after September 26, 1904. All fresh-air inlets approved prior to said date are disapproved.] *Where possible it will extend to the outer air, and finish with a return bend at least one foot above grade and at least ten feet away from any window or cold-air box. When this arrangement is not possible, the fresh-air inlet must open into the side of a box not less than eighteen inches square, placed below the sidewalk at the curb. The bottom of the box must be eighteen inches below the under side of the fresh-air inlet pipe. The box may be of cast iron, or it may be constructed with eight-inch walls of brick, or flagstone laid in hydraulic cement. The box must*

*be covered by a flagstone fitted with removable metal grating, leaded into the stone, having openings equal in area to the area of the fresh-air inlet, and not less than one-half inch in their least dimension. The fresh-air inlet must be of the same size as the drain up to four inches; for five-inch and six-inch drains it must not be less than four inches in diameter; for seven-inch and eight-inch drains not less than six inches in diameter; and for larger drains not less than eight inches in diameter, the removable portions of grate to be at least eight by twelve inches in size.*

*An automatic device approved by the superintendent of buildings may be used, when set in a manner satisfactory to the said superintendent.*

## VIII.

### SOIL AND WASTE PIPES.

80. All main, soil, waste or vent pipes must be of iron, steel or brass.

81. When they receive the discharge of fixtures on any floor above the first, they must be extended in full caliber at least one foot above the roof coping, and well away from all shafts, chimneys, windows or other ventilating openings. When less than four inches in diameter, they must be enlarged to four inches at a point not less than one foot below the roof surface by an increaser not less than nine (9) inches long.

82. No caps, cowles or bends shall be affixed to the top of such pipe.

83. In lodging-houses wire baskets must be securely fastened into the opening of each pipe that is in an accessible position.

84. Necessary offsets above the highest fixture branch must not be made at an angle of less than 45 degrees to the horizontal.

85. Soil and waste pipes must have proper Y branches for all fixture connections.

86. No connection to lead branches for water-closets or slop sinks will be permitted, except the required branch vent.

87. Branch soil and waste pipe must have a fall of at least one-quarter inch per foot.

88. Short TY branches will be permitted on vertical lines only. Long one-quarter bends and long TYs are permitted. Short one-quarter bends and double hubs, short roof increasers and common offsets, and bands and saddles are prohibited.

89. The diameters of soil and waste pipes must not be less than those given in the following tables:

| | Inches. |
|---|---|
| Main soil pipes | 4 |
| Main soil pipes for water closets on five or more floors | 5 |
| Branch soil pipes | 4 |
| Main waste pipes | 2 |
| Main waste pipes for kitchen sinks on five or more floors | 3 |
| Branch waste pipes for laundry tubs | 1½ |
| When set in ranges of three or more | 2 |
| Branch waste for kitchen sinks | 2 |
| Branch waste for urinals | 2 |
| Branch waste for other fixtures | 1½ |

## IX.

### VENT-PIPES.

90. All pipes must be protected from syphonage and back pressure, and the drainage system ventilated by special lines of vent-pipes.

91. All vent-pipe lines and main branches must be of iron, steel or brass. They must be increased in diameter and extended above the roof as required for waste-pipes. They may be connected with the adjoining soil or waste line well above the highest fixture, but this will not be permitted when there are fixtures on more than six floors.

92. All offsets must be made at an angle of not less than forty-five degrees to the horizontal, and all lines must be connected at the bottom with soil or waste-pipe or the drain in such a manner as to prevent the accumulation of rust scale.

93. Branch vent-pipes should be kept above the top of all connecting fixtures, to prevent the use of vent-pipes as soil or waste-pipes. Branch vent-pipes should be connected as near to the crown of the trap as possible.

94. Earthenware traps for water-closets and slop sinks must be ventilated from the branch soil or waste-pipe just below the trap, and this branch vent-pipe must be so connected as to prevent obstruction, and no waste-pipe connected between it and the fixture. Earthenware traps must have no vent-horns.

95. No sheet metal, brick or other flue shall be used as a vent-pipe.

96. The sizes of vent-pipes throughout must not be less than the following:

For main vents and long branches, two inches in diameter; for water-closets on three or more floors, three inches in diameter; for other fixtures on less than seven floors, two inches in diameter; three-inch vent-pipe will be permitted for less than nine stories, for more than eight and less than sixteen stories, four inches in diameter; for more than fifteen and less than twenty-two stories, five inches in diameter; for more than twenty-one stories, six inches in diameter; branch vents for traps larger than two inches, two inches in diameter; branch vents for traps two inches or less, one and one-half inches in diameter.

For fixtures other than water-closets and slop-sinks and for more than eight (8) stories, vent-pipes may be one (1) inch smaller than stated above.

## X.

### TRAPS.

97. No form of trap will be permitted to be used unless it has been approved by the bureau of buildings, and no masons' cesspool, bell, pot, bottle or D-trap will be permitted, nor any form of trap that is not self-cleaning nor has interior chamber mechanism, nor any trap, except earthenware ones, that depend upon interior partitions for a seal.

98. Every fixture must be separately trapped by a water-sealing trap laced as close to the fixture outlet as possible.

99. A set of wash traps may connect with a single trap, or into the trap of an adjoining sink, provided both sink and tub waste outlets are on the same side of the waste line, and the sink is nearest the line. When so connected the waste-pipe from the wash traps must be branched in below the water seal.

100. The discharge from any fixture must not pass through more than one trap before reaching the house drain.

101. All traps must be well supported and set true with respect to their waste levels.

102. All fixtures other than water-closets and urinals must have strong metallic strainers or bars over the outlets to prevent obstruction of the waste-pipe.

103. All exposed or accessible traps, except water-closet traps, must have brass trap screws for cleaning the trap placed on the inlet side, or below the water level.

104. All iron traps for house drain, yard and other drains and leaders must be running traps with handhole cleanouts of full size of the traps when the same are less than five (5) inches. All traps underground must be made accessible by brick manholes with proper covers.

105. Overflow pipes from fixtures must in all cases be connected on the inlet side of the traps.

106. All earthenware traps must have heavy brass floor plates soldered to the lead bends, or where brass or iron pipes are used, to be screwed to the same and bolted to the trap flange and the joint be made gas-tight without the use of red or white lead or any similar substances or rubber washers, the use of which in the making of said connections is hereby prohibited and no device for such connections will be permitted to be used unless it has been approved by the bureau of buildings.

107. No trap shall be placed at the foot of main soil and waste-pipe lines.

108. The sizes for traps must not be less than those given in the following table:

| | |
|---|---|
| Traps for water closets | 4 inches in diameter |
| Traps for slop sinks | 2 inches in diameter |
| Traps for kitchen sinks | 2 inches in diameter |
| Traps for wash trays | 2 inches in diameter |
| Traps for urinals | 2 inches in diameter |
| Traps for other fixtures | 1½ inches in diameter |

Traps for leaders, areas, floor and other drains must be at least three inches in diameter.

## XI.

### SAFE AND REFRIGERATOR WASTE-PIPES.

109. Safe and refrigerator waste-pipes must be of galvanized iron, and be not less than one and one-quarter (1¼) inches in diameter, with lead branches of the same size, with strainers over the inlets secured by a bar soldered to the lead branch.

110. Safe waste-pipes must not connect directly with any part of the plumbing system.

111. Safe waste-pipes must either discharge over an open water-supplied, publicly placed, ordinarily used sink, placed not more than three and one-half feet above the cellar floor.

112. The safe waste-pipe from a refrigerator [must be trapped at the bottom of the line only and] cannot discharge upon the ground or floor. It must discharge over an ordinary portable pan, or over some properly trapped, water-supplied sink, as above. In no case shall the refrigerator waste-pipe discharge over a sink located in a room used for lying purposes.

113. The branches on vertical lines must be made by Y fittings, and be carried up to the safe with as much pitch as possible.

114. Lead safes must be graded and neatly turned over bevel strips at their edges.

115. Where there is an offset on a refrigerator waste-pipe in the cellar, there must be cleanouts to control the horizontal part of the pipe.

116. In tenement-houses [lodging-houses] the refrigerator waste-pipes must extend over the roof, and must not be larger than one and one-half inches, nor the branches smaller than one and one-quarter inches.

117. Refrigerator waste-pipes [except in tenement-houses] and all safe waste-pipes, must have brass flap-valves at their lower ends.

## XII.

118. In lodging-houses, factories, workshops and all public buildings, the entire water-closet apartment and side walls to a height of six inches from the floor, except at the door, must be made waterproof with asphalt, cement, tile, metal or other waterproof material as approved by the bureau of buildings.

119. In lodging-houses the water-closet and urinal apartments must have a window opening to the outer air; if three stories or less in height, they may have such window opening on a ventilating shaft not less than ten square feet in area.

120. In all buildings the outside partition of such apartment must extend to the ceiling or be independently ceiled over, and these partitions must be air-tight. The outside partitions must include a window opening to outer air on the lot whereon the building is situated, or some other approved means of ventilation must be provided. When necessary to properly light such apartments, the upper part of the partitions must be made of glass. The interior partitions of such apartments must be dwarfed partitions.

121. The general water-closet accommdations for a [tenement or] lodging-house cannot be placed in the cellar.

122. No water-closet can be placed outside of a building.

123. The closets must be set open and free from all inclosing woodwork.

124. Where water-closets will not support a rim seat, the seat must be supported on galvanized iron legs, and a drip tray must be used.

125. Every earthenware closet in all new work and in all alterations where it is not impossible to use it because of water-pipes or other obstructions, must be set on a natural stone slab. Sand or artificial stone or tile will not be allowed.

126. All water-closets must have earthenware flushing rim bowls. "Pipe-wash" bowls or hoppers will not be permitted.

127. Pan, valve, plunger, offset-washout and other water-closets having an unventilated space, or whose walls are not thoroughly washed at each discharge, will not be permitted.

128. Long hoppers will not be permitted, except where there is an exposure to frost.

129. The connections of traps must be made to main soil, waste or vent pipe, by means of lead caulked or screwed joints. Drip trays must be enameled on both sides and secured in place.

130. In all sewer-connected occupied buildings there must be at least one water-closet, and there must be additional closets so that there will never be more than fifteen persons per closet.

131. In lodging-houses there must be one water-closet on each floor, and where there are more than fifteen persons on any floor there must be an additional water-closet on that floor for every fifteen additional persons or fraction thereof.

132. Water-closets and urinals must never be connected directly with or flushed from the water supply pipes.

133. Water-closets and urinals must be flushed fom separate cisterns on each floor, the water from which is used for no other purpose; where flushometers are used, they must be supplied from separate tanks provided for that purpose, and in no case are connections to be made direct with the water service pipe.

134. The overflow of cisterns may discharge into the bowls of the closet, but in no case connect with any part of the drainage system.

135. Iron water-closet and urinal cisterns and automatic water-closet and urinal cisterns are prohibited.

136. The copper lining of water-closet and urinal cisterns must not be lighter than ten (10) ounces copper.

137. Water-closet flush-pipe must not be less than one and one-fourth inches and urinal flush-pipes one (1) inch in diameter, and if of lead must not weigh less than two and one-

half pounds and two pounds per linear foot. Flush couplings must be of full size of the pipe.

138. Latrine's trough water-closets and similar appliances may be used only on written permit from the superintendent of buildings, and must be set and arranged as may be required by the terms of the permit.

139. All urinals must be constructed of materials impervious to moisture that it will not corrode under the action of urine. The floor and wall of the urinal apartments must be lined with similar non-absorbent and non-corrosive material.

140. The platforms or treads of urinal stalls must never be connected independently to the plumbing system, nor can they be connected to any safe waste-pipe.

141. Iron trough water-closets and trough urinals must be enameled or galvanized.

142. *All* [in lodging houses] sinks must be entirely open, on iron legs or brackets, without any inclosing woodwork.

143. Wooden washtubs are prohibited. Cement or artificial stone tubs will not be permitted unless approved by the bureau of buildings.

## XIII.

### WATER SUPPLY FOR FIXTURES.

144. All water-closets and other plumbing fixtures must be provided with a sufficient supply of water for flushing to keep them in a proper and cleanly condition.

145. When the water pressure is not sufficient to supply freely and continuously all fixtures, a house supply tank must be provided of sufficient size to afford an ample supply of water to all fixtures at all times. Such tank must be supplied from the pressure or by pumps, as may be necessary; when from the pressure, ball-cocks must be provided.

146. If water pressure is not sufficient to fill house-tank, power pumps must be provided for filling them in lodging-houses, factories and workshops.

147. Tanks must be covered so as to exclude dust, and must be so located as to prevent water contamination by gas and odors from the plumbing fixtures.

148. House supply-tanks must be of wood or iron or of wood lined with tinned and planished copper.

149. House tanks must be supported on iron beams.

150. The overflow pipe should discharge upon the roof, where possible, and in such cases should be brought down to within six (6) inches of the roof, or it must be trapped and discharged over an open and water-supplied sink not in the same room, not over 3½ feet above the floor. In no case shall the overflow be connected with any part of the plumbing system.

151. Emptying pipes for such tanks must be provided and be discharged in the manner required for overflow pipes, and may be branched into overflow pipes.

152. No service-pipes or supplying-pipes should be run, and no tanks, flushing cisterns or water-supplied fixtures should be placed where they would be exposed to frost.

153. Where so placed they shall be properly packed and boxed in such manner as to prevent freezing.

## XIV.

### TESTING THE PLUMBING SYSTEM.

154. The entire plumbing and drainage system within the building must be tested by the plumber in the presence of a plumbing inspector, under a water or air test, as directed. All pipes must remain uncovered in every part until they have successfully passed the test. The plumber must securely close all openings as directed by the inspector of plumbing. The use of wooden plugs for this purpose is prohibited.

155. The water test will be applied by closing the lower end of the main house drain and filling the pipes to the highest opening above the roof with water. The water test shall include at one time the house drain and branches, all vertical and horizontal soil, waste and vent and leader lines and all branches therefrom to point above the surface of the nished floor and beyond the finished face of walls and partitions. Deviation from the above rule will not be permitted unless upon written application to and approval by the superintendent of buildings. If the drain or any part of the system is to be tested separately, there must be a head of water at least six (6) feet above all parts of the work so tested, and special provision must be made for including all joints and connections in at least one test.

156. The air test will be applied with a force-pump and mercury columns under ten pounds pressure, equal to twenty inches of mercury. The use of spring gauges is prohibited.

157. After the completion of the work, when the water has been turned on and the traps filled, the plumber must make a pepperment or smoke test in the presence of a plumbing inspector and as directed by him, and no device shall be used to apply said smoke test unless it has been approved by the bureau of buildings.

158. The material and labor for the tests must be furnished by the plumber. *Where the peppermint test is used, two ounces of oil of peppermint must be provided for each line up to five stories and basement in height, and for each additional five stories or fraction thereof one additional ounce of peppermint must be provided for each line.*

## XV.

### PLUMBING IN TENEMENT HOUSES.

159. All sections or parts of sections of the tenement house law relating to plumbing and drainage of tenement-houses are to be observed, and are hereby made a part of these rules and regulations.

## XVI.

### GAS PIPING AND FIXTURES.

160. Hereafter the gas piping and fixtures in all new buildings and all alterations and extensions made to the gas piping or fixtures in old buildings must be done in accordance with the following rules, which are made in accordance with the provisions of section 89 of the building code.

For additional requirements of public buildings, theaters and places of assemblage, see Part XXI of the building code.

161. Before the construction or alteration of any gas piping in any building or part of any building, a permit must be obtained from the superintendent of buildings. This permit will be issued only to a registered plumber *and in conjunction with the permit for plumbing and drainage.* Application must include all floor plans complete, showing each and every outlet and the number of burners to go on each outlet. [Before beginning work.] Small alterations may be made by notifying the bureau of buildings, using the same blank forms provided for alterations and repairs to plumbing.

*162. Before any fixtures are connected with the gas piping, a permit must be obtained from the superintendent of buildings, application for same to be made on forms furnished by the bureau of buildings.*

163. All gas pipe shall be of the best quality wrought iron and of the kind classed as standard pipe, and shall weigh according to the following scale:

| Diameters. | Weights per linear foot. |
|---|---|
| ¾ inch | 0.56 pound |
| 1 inch | 0.85 " |
| ¾ inch | 1.12 " |
| 1 inch | 1.67 " |
| 1¼ inches | 2.24 " |
| 1½ inches | 2.68 " |
| 2 inches | 3.61 " |
| 2½ inches | 5.75 " |
| 3 inches | 7.54 " |
| 3½ inches | 9.00 " |
| 4 inches | 10.66 " |

No pipe allowed of less than ⅜ inch in diameter.

164. All fittings (excepting stop-cocks or valves) shall be of malleable iron. [All bends or angles in the piping system must be made by means of fittings. The bending of pipes will not be permitted.]

165. There shall be a heavy brass straightaway cock or valve on the service pipe immediately inside the front foundation wall.

Iron cocks or valves are not permitted.

166. Where it is not impracticable so to do, all risers shall be left not more than five feet from front wall.

167. No pipe shall be laid so as to support any weight (except fixtures) or be subjected to any strain whatsoever. All pipe shall be properly laid and fastened to prevent becoming trapped, and shall be laid, when practicable, above timbers or beams instead of beneath them. Where running lines or branches cross beams they must do so within thirty-six inches of the end of the beams, and in no case shall the said pipes be let into the beams more than two inches in depth. Any pipe laid in a cold or damp place shall be properly dripped, protected and painted with two coats of red lead and boiled oil or tarred.

168. No gas pipe shall be laid in cement or concrete unless the pipe and channel in which it is placed are well covered with tar, nor within six inches of an electric wire excepting where they immediately join outlets.

169. All drops must be set plumb and securely fastened, each one having at least one solid strap. Drops and outlets less than ¾ of an inch in diameter shall not be left more than one inch below plastering, center-pieces, or woodwork.

170. All outlets and risers shall be left capped until covered by fixtures.

171. No unions or running threads shall be permitted. Where necessary to cut out to repair leaks or make extensions, pipe shall be again put together with right and left couplings.

172. No gasfitters' cement shall be used, except in putting fixtures together.

173. All gas brackets and fixtures shall be placed so that the burners of same are not less than three feet below any ceiling or woodwork, unless the same is properly protected by a shield, in which case the distance shall not be less than eighteen inches.

No swinging or folding gas brackets shall be placed against any stud partition or woodwork.

No gas bracket on any lath and plaster partition or woodwork shall be less than five inches in length, measured from the burner to the plaster surface or woodwork.

Gas lights placed near window curtains or any other combustible material shall be protected by a proper shield.

174. Gas outlets for burners shall not be placed under tanks, back of doors or within four feet of any meter.

175. All buildings shall be piped according to the following scale:

| Diameter. | Length. | Burners. |
|---|---|---|
| ⅜ inch | 26 feet | 3 |
| ½ " | 36 " | 6 |
| ¾ " | 60 " | 20 |
| 1 " | 80 " | 30 |
| 1¼ " | 110 " | 60 |
| 1½ " | 150 " | 100 |
| 3 " | 200 " | 200 |
| 2½ " | 300 " | 300 |
| 3 " | 450 " | 450 |
| 3½ " | 500 " | 600 |
| 4 " | 600 " | 750 |

176. Outlets for gas ranges shall have a diameter not less than required for six burners, and all gas ranges and heaters shall have a straightway cock on service pipe.

177. When brass piping is used on the outside of plastering or woodwork it shall be classed as fixtures.

178. All brass tubing used for arms and stems of fixtures shall be at least No. 18 standard gauge and full size outside, so as to cut a full thread. All threads on brass pipe shall screw in at least 5-16 of an inch. All rope or square tubing shall be brazed or soldered into fittings and distributors, or have a nipple brazed into the tubing.

179. All cast fittings, such as cocks, swing joints, double centers, nozzles, etc., shall be extra heavy brass. The plugs of all cocks must be ground to a smooth and true surface for their entire length, be free from sandholes, have not less than ¾ of an inch bearing (except in cases of special design), have two flat sides on the end for the washer, and have two nuts instead of a tail screw. All stop pins to keys or cocks shall be screwed into place.

180. After all piping is fitted and fastened and all outlets capped up, there must be applied by the plumber, in the presence of an inspector of the bureau of buildings, a test with air to a pressure equal to a column of mercury six inches in height, and the same to stand for five minutes; only mercury gauge shall be used. No piping shall be covered up, nor shall any fixxture, gas, heater or range be connected thereto until a card showing the approval of this test has been issued by the superintendent of buildings. And, again, when all fixtures are hung, a similar test shall be applied in exactly the same manner, excepting that one burner fixture will be omitted to permit of applying a pump and gauge. On the inspector's report of this test as above, a final approved card in duplicate will be issued by the superintendent of buildings.

181. No meter will be set by any gas company until a certificate is filed with them from the bureau of buildings certifying that the gas pipes and fixtures comply with the foregoing rules.

182. When for any reason it may be impracticable to comply strictly with the foregoing rules, the superintendent of buildings shall have power to modify their provisions so that the spirit and substance thereof shall be complied with. Such modifications shall be indorsed upon the permit over the signature of the superintendent of buildings.

## REGULATIONS OF THE BUREAU OF BUILDINGS FOR THE TESTING OF NEW MATERIALS OF CONSTRUCTION.

1. These regulations are to apply to all such new materials as are used in building construction, in the same manner and for the same purposes, as natural stones, brick and concrete are now authorized by the building code.

2. Before any such materials is used in buildings, an application for its use and for a test of the same must be filed with the superintendent of buildings. A description of the material and a brief outline of its manufacture must be embodied in the application.

3. The material must be subjected to the following tests: transverse, compression, absorption, freezing and fire. Additional tests may be called for when, in the judgment of the superintendent, the same may be necessary. All such tests must be made at some laboratory of recognized standing under the supervision of the engineer of the bureau of buildings. The tests will be made at the expense of the applicant.

4. The results of the tests, whether satisfactory or not, must be placed on file in the bureau of buildings. They shall be open to public inspection, but need not necessarily be published.

5. For the purposes of the tests, at least fifteen samples or test pieces must be provided. Such samples must represent the ordinary commercial product. They may be selected from stock by the superintendent of buildings, or his representative, or may be made in his presence, at his discretion. The samples must be approximately eight inches long, four inches wide and two inches thick. In cases where the material is made and used in special shapes or forms, full size samples may also be called for and tested in such manner as may be directed by the superintendent of buildings, to determine the physical characteristic specified in regulation three.

6. The samples may be tested as soon as desired by the applicant, but in no case later than sixty days after manufacture.

7. The weight per cubic foot and specific gravity of the material must be determined.

8. These tests shall be made in series of at least five, except that in the fire tests a series of two (four samples) is sufficient.

The transverse tests shall be made first on full-size samples (8 by 4 by 2). The resulting half samples are then used for the compression and absorption tests, but in no case must both halves of the same piece be used in either series. Half samples may also be used for the freezing and fire tests under the same restrictions. The remaining samples are kept in reserve, in case unusual flaws or exceptional or abnormal conditions make it necessary to discard certain of the tests. All the samples must be marked for identification and comparison.

9. The transverse test shall be made as follows: The sample shall be placed flatwise on two rounded knife-edge bearings set parallel, seven inches apart. A load is then applied on top, midway between the supports, and transmitted through a similar round edge, until the sample is ruptured. The modulus of rupture shall then be determined by multiplying the breaking load in pounds by twenty-one (three times the distance between supports in inches), and dividing the result by twice the product of the width (approximately four) in inches by the square of the depth (approximately two) in inches.

10. The compression test shall be made as follows: The sample must first be thoroughly dried to a constant weight. It must be carefully measured, then bedded flatwise either in plaster of paris or blotting paper, to secure a uniform bearing in the testing machine, and crushed. The total breaking load is then divided by the area in compression in square inches.

11. The absorption test must be made as follows: The sample is first thoroughly dried to a constant weight. The weight must be carefully recorded. It is then placed in a pan or tray of water, immersing it to a depth of not more than one-half inch. It is again carefully weighed at the following periods: Thirty minutes, four hours and forty-eight hours, respectively, from the time of immersion, being replaced in the water in each case as soon as the weight is taken. Its compressive strength, while still wet, is then determined at the end of the forty-eight hour period, in the manner specified in regulation ten.

12. The freezing test is made as follows: The sample is immersed, as described in regulation eleven, for at least four hours, and then weighed. It is then placed in a freezing mixture or a refrigerator, or otherwise subjected to a temperature of less than fifteen degrees Fahrenheit, for at least twelve hours. It is then removed and placed in water, where it must remain for at least one hour, the temperature of which is at least one hundred and fifty degrees Fahrenheit. This operation is repeated twenty times, after which the sample is again weighed while still wet

from last thawing. Its crushing strength should then be determined, as called for in regulation ten.

13. The first test must be made as follows: Two samples are placed in a cold gas furnace, in which the temperature is gradually raised to seventeen hundred degrees Fahrenheit in one hour. One of the samples is then plunged in cold water (about fifty to sixty degrees Fahrenheit), and results noted. The second sample is permitted to cool gradually in air, and the results noted.

14. The following requirements must be met to secure an acceptance of the materials: The modulus of rupture must average four hundred and fifty and must not fall below three hundred and fifty in any case. The ultimate compressive strength must average three thousand pounds per square inch and must not fall below twenty-five hundred in any case. The percentage of absorption (being the weight of water absorbed divided by the weight of the dry sample) must not average higher than fifteen per cent. and must not exceed twenty per cent. in any case. The reduction of compressive strength must not be more than thirty-three and one-third per cent., except that when the lower figure is still above three thousand pounds per square inch, the loss in strength may be neglected. The freezing and thawing process must not cause a loss in weight greater than ten per cent., nor a loss in strength of more than thirty-three and one-third per cent., except that when the lower figure is still above three thousand pounds per square inch, the loss in strength may be neglected. The fire test must not cause the material to disintegrate. (Note — No great stress will be laid on this last test.)

15. The approval of any material is given only under the following conditions:

(a) A brand mark for identification must be impressed on, or otherwise attached to the material.

(b) A plant for the production of the material must be in full operation when the official tests are made.

(c) The name of the firm or corporation and the responsible officers must be placed on file with the superintendent of buildings, and changes in same promptly reported.

(d) The tests must be repeated at any time when called for, on samples selected from the open market, where there is any doubt whether the product is up to the standard of these regulations.

(e) In case the results of tests made under this condition (d) should show that the standard of these regulations is not maintained, the approval of this bureau will be at once suspended or revoked.

## REGULATIONS OF THE BUREAU OF BUILDINGS FOR THE CONSTRUCTION OF OUTSIDE FIRE ESCAPES.

Unless otherwise approved by the superintendent of buildings in writing, outside fire escapes shall be arranged and constructed as follows:

### Location.

1. Iron balconies at least three feet wide shall be located as directed. They shall communicate one with the other by means of stairs and with the ground by either stairs or drop ladders as may be ordered. The balconies must be of sufficient length to comply with all the requirements of these regulations.

### Balconies.

2. The balconies shall have a landing not less than twenty-four inches square at the head of each stairway. Except in cases where the stairways reach and leave the balconies at the ends, there shall be a passageway at the side of the stairs not less than fourteen inches wide in every part. The stairway opening in each platform shall be of a size sufficient to provide clear headway, and shall be inclosed on the long side by a three-quarter inch rail, well braced.

### Floors of Balconies.

3. The floors of balconies shall be of wrought iron or steel slats not less than one and a half inches by three-eighths of an inch, placed not more than one and one-quarter inches apart, and well secured and riveted to iron battens one and a half inches by three-eighths of an inch, not over three feet apart and riveted at the intersection. The ends of such floor slats shall project beyond the platform frame, but shall not rest on the bottom rail. The openings for stairways in all balconies shall not be less than twenty-one inches wide and thirty-two inches long, and such openings shall have no covers of any kind. The platforms or balconies shall be constructed and erected to safely sustain in all their parts a safe load at a ratio of four to one, of not less than eighty pounds per square foot of surface.

**Railings.**

4. Except in the case where stairs are at ends of balconies, the outside top rail shall extend around the entire length of the platform and shall go through the wall at each end and be properly secured by nuts and four-inch square washers at least three-eighths of an inch thick, and no top rail shall be connected at angles by cast iron. Where stairways at ends of balconies make it impossible to secure top rails to walls, such top rails must be made rigid and secure by means of inclined braces from the brackets on the outside of the railings, or other means satisfactory to the superintendent of buildings, that will offer no obstruction along the balcony. The top rail of balconies shall be one and three-quarter inches by one-half inch of wrought iron, or one and a half inch angle iron one-quarter inch thick. The bottom rails shall be one and one-half inches by three-eighths of an inch wrought iron, or one and a half-inch angle iron, one-quarter inch thick, well leaded or cemented into the wall. The ends of all rails which go through the walls shall be worked out to not less than three-quarter inch bolt size for top rails, or one-half inch bolt size for bottom rails, and if constructed as separate pieces shall be properly secured to the rails with not less than two one-half inch rivets. The standards or filling in bars shall be not less than one-half inch round or square wrought iron, well riveted to the top and bottom rails and platform frame. Such standards or filling-in bars shall be securely braced by outside brackets at suitable intervals, and shall be placed not more than six inches from centers; the height of railings shall in no case be less than two feet nine inches.

**Stairways.**

5. The stairways shall be placed at an angle of not more than sixty degrees, with steps not less than six inches in width and twenty inches in length, and with a rise of not more than nine inches; and shall be constructed and erected to fully sustain in all their parts a safe load at a ratio of four to one of not less than one hundred pounds per step, with the exception of the treads which must safely sustain at such ratio a load of two hundred pounds. The treads shall be flat open treads or may be constructed of flat bars, not over one and one-half inches wide, riveted to angle irons of a size not less than one and one-half inch, with the open spaces between such bars not over three-quarters of an inch wide. The strings shall be not less than three-inch channels of iron or steel, or three-eighths by four-

inch bars, or two three-eighths by one and one-half inch bars properly latticed, or two one-quarter by one and one-half inch angles properly latticed, or other shape equally strong. Unless of channel or angle iron they shall be stiffened by the use of braces properly leaded into or bolted through the wall, and also bolted through the string at a height of not less than seven feet above the floor of the balcony. They shall rest upon and be bolted to a bracket, which shall be fastened through the wall as hereinafter provided. The strings shall be securely bolted to a bracket at the top, and the steps in all cases shall be double riveted or bolted to the strings. The stairs shall have three-quarter inch iron rails of wrought iron, well braced.

**Brackets.**

6. The brackets shall not be less than one-half inch by one and three-quarter inches wrought iron, placed edgewise, or one and three-quarter inch angle iron, one-quarter inch thick, well braced; they shall not be more than four feet apart, and shall be braced by means of not less than three-quarters of an inch square wrought iron, and shall extend two-thirds of the width of the respective balconies or brackets. The brackets shall go through the wall and be turned down three inches or be properly secured by nuts and four-inch square washers at least three-eighths of an inch thick. On new buildings the brackets shall be set as the walls are being built. When brackets are put on buildings already erected the part going through the wall shall not be less than one inch in diameter with screw nuts and washers not less than five inches square and one-half inch thick. If the end going through the wall is separately constructed it shall be properly connected to the bracket with not less than two five-eighths inch rivets staggered.

**Drop Ladders.**

7. Where drop ladders are permitted instead of stairs from the lowest balcony, they shall be of sufficient length to reach from the lowest balcony or platform to a safe landing place beneath. It shall be not less than fifteen inches in width, with strings not less than one-half inch by two inches and rungs of not less than five-eighths of an inch in diameter placed not over twelve inches apart and properly riveted through the strings. Where the lowest balcony is more than fourteen feet above the ground beneath the same a suitable landing platform shall be provided. Such platform shall be located not more than ten feet above the

ground, and shall be connected with the fire escapes above by a stairway constructed as herein required. Such platform shall be not less than four feet in length by three feet in width, and shall be provided at each end with proper railings and a drop ladder to reach the ground. Except as specified, it shall be constructed in conformity with the other provisions of these regulations.

**Goose-neck Ladders.**

8. Wherever possible, a balcony at the top story of any building shall be provided with a goose-neck ladder leading to the roof. Such goose-neck ladder shall be securely fastened to the wall of the building and to the roof, and shall be so located as to afford safe access to the roof. Such ladder shall be constructed as provided for drop ladders; the strings shall be in one piece and shall not be connected in parts by rivets and bolts; such ladders shall be arranged to rest on brackets and not on slats forming the floor of the balcony.

**Scuttle Ladders.**

9. Scuttle ladders, where required, shall be constructed as above provided for stairs, except that they may be set at a steeper angle. They must be properly secured at top and bottom.

**Painting.**

10. All the parts of such fire escapes shall receive not less than two coats of paint, one in the shop and one after erection. All fire escape balconies shall contain a plate firmly fastened to the standards or filling-in bars near the top railing, containing in plain, large, prominent, raised letters, each letter to be not less than one-half an inch in length, the following words: "Any one placing any encumbrance on this balcony will be fined ten dollars." The lettering on such plates shall be painted with a paint of a color different from that used on the body of the place, so that the letters will be prominent and distinct.

11. In case it may be desired, for architectural or other reasons, to vary from these requirements, in the shape or construction of the brackets or railings, such changes may be submitted to the superintendent of buildings, but shall not be made until his approval has been obtained.

## REGULATIONS OF THE BUREAU OF BUILDINGS IN REGARD TO THE USE OF CONCRETE-STEEL CONSTRUCTION.

1. The term "concrete-steel" in these regulations shall be understood to mean an approved concrete mixture reinforced by steel of any shape, so combined that the steel will take up the tensional stresses and assist in the resistance to shear.

2. Concrete-steel construction will be approved only for buildings which are not required to be fireproof by the building code, unless satisfactory fire and water tests shall have been made under the supervision of this bureau. Such tests shall be made in accordance with the regulations fixed by this bureau and conducted as nearly as practicable in the same manner as prescribed for fireproof floor fillings in section 106 of the building code. Each company offering a system of concrete-steel construction for fireproof buildings must submit such construction to a fire and water test.

3. Before permission to erect any concrete-steel structure is issued, complete drawings and specifications must be filed with the superintendent of buildings, showing all details of the construction, the size and position of all reinforcing rods, stirrups, etc., and giving the composition of the concrete.

4. The execution of work shall be confided to workmen who shall be under the control of a competent foreman or superintendent.

5. The concrete must be mixed in the proportions of one of cement, two of sand and four of stone or gravel; or the proportions may be such that the resistance of the concrete to crushing shall not be less than 2,000 pounds per square inch after hardening for twenty-eight days. The tests to determine this value must be made under the direction of the superintendent of buildings. The concrete used in concrete-steel construction must be what is usually known as a "wet" mixture.

6. Only high-grade Portland cements shall be permitted in concrete-steel construction. Such cements, when tested neat, shall, after one day in air, develop a tensile strength of at least 300 pounds per square inch; and after one day in air and six days in water shall develop a tensile strength of at least 500 pounds per square inch; and after one day in air and twenty-seven days in water shall develop a tensile strength of at least

600 pounds per square inch. Other tests, as to fineness, constancy of volume, etc., made in accordance with the standard method prescribed by the American Society of Civil Engineers' Committee may, from time to time, be prescribed by the superintendent of buildings.

7. The sand to be used must be clean, sharp grit sand, free from loam or dirt, and shall not be finer than the standard sample of the bureau of buildings.

8. The stone used in the concrete shall be a clean, broken trap rock, or gravel, of a size that will pass through a three-quarter inch ring. In case it is desired to use any other material or other kind of stone than that specified, samples of same must first be submitted to and approved by the superintendent of buildings.

9. The steel shall meet the requirements and section twenty-one of the building code.

10. Concrete-steel shall be so designed that the stresses in the concrete and the steel shall not exceed the following limits:

| | |
|---|---|
| Extreme fiber stress on concrete in compression | 500 lbs. per sq. in. |
| Shearing stress in concrete | 50 " " " " |
| Concrete in direct compression | 350 " " " " |
| Tensile stress in steel | 16,000 " " " " |
| Shearing stress in steel | 10,000 " " " " |

11. The adhesion of concrete to steel shall be assumed to be not greater than the shearing strength of the concrete.

12. The ratio of the moduli of elasticity of concrete and steel shall be taken at one to twelve.

13. The following assumption shall guide in the determination of the bending moments due to the external forces. Beams and girders shall be considered as simply supported at the ends, no allowance being made for continuous construction over supports. Floor plates, when constructed continuous and when provided with reinforcement at top of plate over the supports, may be treated as continuous beams, the bending moment for uniformly distributed loads being taken at not less than $\frac{WL}{10}$; the bending moment may be taken at $\frac{WL}{20}$ in the case of square floor plates which are reinforced in both directions and supported on all sides. The floor plate to the extent of not more than ten times the width of any beam or girder may be taken as part of that beam or girder in computing its moment of resistance.

14. The moment of resistance of any concrete-steel construction under transverse loads shall be determined by formulae based on the following assumptions:

(a) The bond between the concrete and steel is sufficient to make the two materials act together as a homogeneous solid.

(b) The strain in any fiber is directly proportionate to the distance of that fiber from the neutral axis.

(c) The modulus of elasticity of the concrete remains constant within the limits of the working stresses fixed in these regulations.

From these assumptions it follows that the stress in any fiber is directly proportionate to the distance of that fiber from he neutral axis.

The tensile strength of the contract shall not be considered.

15. When the shearing stresses developed in any part of a concrete-steel construction exceed the safe working strength of concrete, as fixed in these regulations, a sufficient amount of steel shall be introduced in such a position that the deficiency in the resistance to shear is overcome.

16. When the safe limit of adhesion between the concrete and steel is exceeded, some provision must be made for transmitting the strength of the steel to the concrete.

17. Concrete-steel may be used for columns in which the ratio of length to least side or diameter does not exceed twelve. The reinforcing rods must be tied together at intervals of not more than the least side or diameter of the column.

18. The contractor must be prepared to make load tests on any portion of a concrete-steel construction, within a reasonable time after erection, as often as may be required by the superintendent of buildings. The tests must show that the construction will sustain a load of three times that for which it is designed without any sign of failure.

Approved September 9th, 1903.

## PROVISIONS CONTAINED IN PERMIT FROM BUREAU OF HIGHWAYS TO PLACE BUILDING MATERIALS ON STREET.

Permission is granted to place building materials upon the street in front of premises in the city of New York, upon the following conditions:

1st. The portion of said street to be occupied shall not exceed one-third (1-3) of the width of the carriageway outside curbstone. The materials to be placed near the curbstone and directly in front of said premises.

2d. The materials shall be so placed as not to obstruct the free flowage of water along the gutter in front of or adjoining said premises.

3d. The sidewalk in front of said premises shall be kept at all times free and clear for pedestrians, and suitable provisions maintained when the same is removed for alterations or other purposes.

4th. The material shall occupy a space of uniform width, and shall not be placed within two (2) feet of any railroad track, nor within four (4) feet of any city lamp post, or ten (10) feet of any fire hydrant. The carriageway of all streets shall be covered with planking before such material is placed thereon, which planking shall be limited to the space included in this permit, and shall not interfere with the free flowage of water in the gutterways, and no material or other incumbances shall be placed upon the highway outside the limits of said planking.

5th. In all cases suitable and sufficient lights are to be placed upon such building materials at twilight in the evening, and the same are to be kept burning every night until such building materials are removed from such street.

6th. Fences must be erected to guard excavations and to prevent pedestrians from falling into the excavations.

7th. Asphalt pavements must be properly covered with planking to protect the same from damage, before any building materials are placed thereon. Persons holding this permit will be held liable for any damage sustained to these pavements through neglect to comply with this condition.

8th. Any violation of the ordinances relating to barriers, erection of fences, placing sufficient lights to prevent accidents, or failure to comply with the above conditions, or either of them, will be sufficient cause for revocation of this permit, and the com-

mencement of proceedings to recover penalties for the violation of the same.

9th. In case of any street opening or repairing or laying of water pipes, gas pipes, subways or other improvement or alteration, this permit is hereby revoked, and all material must be immediately removed without further notice.

10th. No material shall be placed on unpaved cuts.

The holder of this permit is required to replace any pavement disturbed in consequence thereof in proper condition, and to remove any rubbish, dirt or surplus material therefrom, within the time for which this permit is granted; and the holder of this permit shall notify the assistant commissioner of public works, borough of Brooklyn, on or before the expiration of this permit, of the time when the work to which the permit applies is completed, and no further permit will be issued to any person who shall fail to comply with these conditions.

Chapter 8, section 231, Ordinances 1880.— The owner or builder of any house or other buildings which may be erecting or repairing in the city of New York, shall cause all the rubbish of every kind occasioned thereby which may accumulate in the street, or be cast into the street, and all the ground, stone, sand and clay which may be dug from the cellar or yard, or area or vault, and cast into the street, to be removed out of said street before sunset on each day, under penalty of five dollars for each day's neglect, to be recovered from the owner or builder severally and respectively.

## A GENERAL ORDINANCE PROVIDING FOR THE ISSUING OF PERMITS FOR THE ERECTION OF BAY WINDOWS PROJECTING BEYOND THE BUILDING LINE.

Section 1. The borough presidents and the park commissioners having jurisdiction shall issue permits for the erection of bay windows projecting beyond the building line, provided in the opinion of the officer having jurisdiction no injury will come to the public thereby. Permits for the erection of bay windows lying within any park, square or public place, or within a distance of three hundred and fifty feet from the outer boundaries thereof, shall be issued by the park commissioner having jurisdiction, as provided in section 612 of the Charter, as amended by section 1, chapter 723 of the Laws of 1901. Permits for the erection of all other bay windows shall be issued by the borough president having jurisdiction.

For the purposes of this ordinance a "bay window" shall be taken to mean and include all projections on the face of a building in the nature of windows, such as are commonly called bay windows, show windows, criel windows and bow windows, without regard to the material of which they are constructed or to the purpose for which they are to be used.

§ 2. Before the erection of any bay window projecting beyond the building line shall have been commenced, the owner or his duly authorized agent shall make application in writing to the officer having jurisdiction, on suitable blanks furnished by him, and shall state the length and width of the proposed bay window, the number of stories through which it is intended to be carried, and the number of square feet of area covered by that portion of the bay window projecting beyond the building line. Drawings showing the size and area covered by the bay window, the number of stories through which it is proposed to be carried and its location in reference to the lot and building lines shall be submitted with each application, and for the purpose of computing the area covered by a bay window projecting beyond the building line the outside face of the bay, exclusive of cornices, pilasters, trims, etc., shall be the line taken as a basis of computation.

Each application for the erection of a bay window projecting more than one foot beyond the building line shall have indorsed

thereon the consent of all the adjoining property owners within a distance of fifty feet from the center of the bay window, on the same side of the street; meaning, thereby, so much of the side of the street as is unintersected by any other street on which it is proposed to be erected.

Each application shall be accompanied by the amount of the compensation due the city for the privilege of erecting said bay window as hereinafter provided.

§ 3. Each application for the erection of a bay window projecting more than one foot beyond the building line shall be accompanied by a certified copy of the last assessed valuation of the property on which said bay window is to be erected, which appears upon the books of the department of taxes and assessments. Except as hereinafter provided the amount that shall be paid as a compensation to the city for the privilege of erecting each bay window shall be at the rate of 10 per cent. of the assessed value per square foot of the property on which the said bay window is to be erected for each and every square foot or fraction thereof of area covered by said bay window beyond the building line for each and every story through which it is carried. If the projection of a bay window does not exceed one foot beyond the building line, and it is not carried higher than the sill of the second story windows, the rate throughout the city of New York shall be ten cents for each square foot or fraction thereof of horizontal area covered by said bay windows beyond the building line.

§ 4. Bay windows may be hereafter erected with a projection of not more than three feet beyond the building line, provided that when the projection exceeds one foot beyond the building line the total number of feet in width occupied by all the bay windows on the same frontage of the same building shall not exceed seventy-five per cent. of the width of the frontage of the building on which they are located. When the total number of feet to width occupied by all the bay windows on the same frontage of the same building exceeds seventy-five per cent. of the width of the frontage of the building on which they are located, the projection shall not exceed one foot beyond the building line nor shall the bay window be carried higher than the sill course of the second story windows.

§ 5. Permits for the erection of bay windows shall be issued in duplicate, one of which shall be retained by the applicant and kept at the building during the erection of the window, and the other shall be filed by him, with the plans for the construction of the window, in the department of buildings. If it shall ap-

pear upon completion that the bay window occupies a greater number of square feet or has been carried through a greater number of stories than shall have been paid for, the applicant shall pay twice the sum previously paid for each square foot of area occupied by said bay window over and above the number of square feet paid for originally.

§ 6. Permits granted pursuant to the provisions of this ordinance are revocable permits, and shall have the following clause printed thereon, viz.: "This permit is issued subject to revocation thereof at any time hereafter by the board of aldermen of the city of New York upon the recommendation of the officer having jurisdiction, when the space occupied by said bay window, or any portion thereof, may be required for any public improvement, or upon any violation of any of the terms or conditions upon which this permit is issued." A permit for the erection of a bay window shall be deemed to have expired when the bay window is taken down, and the space formerly occupied thereby shall no longer be used for the purpose for which the permit was issued, unless a permit for its reconstruction shall have been granted, as provided in section 7 of this ordinance. In case it is thereafter desired to erect a bay window on the said property, the applicant shall comply with all the provisions of this ordinance.

§ 7. Permits for the reconstruction of now existing bay windows as defined by this ordinance, and for the reconstruction of all bay windows which shall be hereafter erected under the provisions of this ordinance, shall be issued by the officer having jurisdiction, without the applicant's obtaining the consent of adjoining property owners, as provided in section 2 of this ordinance; provided that the bay window, when reconstructed, shall have no greater projection or width nor be carried through a greater number of stories, nor cover a greater area, than the window as originally constructed, and further provided that no fee shall be charged for the reconstruction of bay windows which have been erected under the provisions of this ordinance or for which a fee has been paid for the privilege of erecting the same under the provisions of the laws in force at the time of the erection of the said bay window. The restrictions specified under section four of this ordinance shall not apply to the reconstruction of now existing bay windows; but permits issued for the reconstruction of now existing bay windows for which no fee has heretofore been paid shall be paid for as provided in section three of this ordinance.

§ 8. Nothing herein contained shall be deemed to conflict with the provisions of the building code, and all bay windows for which permits are issued under the provisions of this ordinance shall be erected in accordance with all the provisions of said code in regard to the kind and quality of materials used. No plans for the construction of a bay window as defined in this ordinance shall be approved by the superintendent of buildings until the permit is filed, as provided by section five of this ordinance.

§ 8-a. A permit for the continuance of any now existing bay window which projects beyond the building line may be issued by the officer who, according to section one of this ordinance, has jurisdiction over the erection of bay windows at the same place. Application for such permit must be in writing and must be accompanied by a certified copy of the last assessed valuation of property on which such bay window stands, which appears upon the books of the department of taxes and assessments, and must also be accompanied by a survey showing the dimensions of such bay window and the number of stories through which it is carried. The application shall be accompanied by the amount of the compensation due the city for the privilege of continuing the bay window, calculated in the same manner and at the same rate as are provided in sections two and three of this ordinance. Permits shall be issued under this section without consent of adjoining property owners. Permits issued under this section shall be subject to all of the provisions of section six of this ordinance, in like manner as are permits for the erection of bay windows. Permits issued under this section shall be issued in duplicate, and one of such duplicates shall be filed in the department of buildings. All fees received under this section shall be accounted for and paid over as provided in section nine of this ordinance. Nothing herein contained shall be construed to revoke any permit or authority heretofore lawfully issued or given.

§ 9. All fees received by the borough presidents or the park commissioners for the issuing of permits for the erection of bay windows shall be accounted for in proper books kept for that purpose, and shall be turned over by them to the city chamberlain and credited to the general fund.

§ 10. Any person, firm or corporation violating any of the provisions of this ordinance shall be liable to a fine of ten dollars ($10) for each offense, and one dollar ($1) for each and every day that such offense shall continue, which shall be duly sued for and collected.

§ 11. All ordinances or parts of ordinances inconsistent or conflicting with the provisions of this ordinance are hereby repealed.

§ 12. This ordinance shall take effect immediately.

As amended June 25, 1903.

## PROVISIONS OF BROOKLYN ORDINANCE IN REGARD TO BAY WINDOWS, STOOPS AND STEPS PROJECTING BEYOND THE BUILDING LINE.

§ 2. No person shall construct any bow window or other window which shall extend into the street more than one foot from the wall of any house or other building; nor shall construct any cellar door which shall extend into the street more than one-twelfth of the width of such street, or more than five feet; nor shall construct any porch which shall project in any street over a cellar door; nor shall construct any platform, stoop or step which shall extend into any street more than one-tenth part of the width of such street, or more than seven feet, or with any other than open backs, sides or railings, or of a greater width than is necessary for the purpose of a convenient passageway into the house or building to which it shall be attached, or any stoop or steps which shall exceed five feet in height; nor shall dig, build or construct any area into the street in front of any building, which shall extend more than one-fifteenth part of the width of any street, or more than five feet, or which shall not be provided with a sufficient railing on the top thereof, to protect travelers from falling therein, placed not more than six inches from the inside of the coping on the wall of such area, and with no gates opening outward, under the penalty of two hundred and fifty dollars for each and every offense.

§ 14. The department of city works is hereby authorized and directed to take out, remove and abate, or cause to be taken out, removed and abated, any stoop, step, platform, bay window, cellar door, area, descent into the cellar or basement, sign, post, tree, erection and any projection from any building or otherwise, and any house or building, and any vault cistern, slide or chute, in, over or upon any street or avenue, contrary to the provisions of this article, and the expense thereof shall be recoverable of the owner or occupant of the premises appertaining to the same, respectively.

Adopted November 8, 1886.

Note — A New York city ordinance containing substantially the same provisions as above, except that the amount of the penalty for violation in Manhattan is one hundred dollars, has been in force there since May 31, 1895.

## STATUTE RELATING TO PLUMBING IN NEW YORK CITY AND RULES MADE UNDER ITS AUTHORITY BY THE DEPARTMENT OF BUILDINGS.

*See Also Section* 141 *of the Building Code.*

### CHAPTER 803, LAWS OF 1896.

AN ACT IN RELATION TO PLUMBING IN THE CITY OF NEW YORK.

Section 1. Once in each year, every employing or master plumber carrying on his trade, business or calling in the city of New York, shall register his name and address at the office of the department of buildings in said city under such rules and regulations as said department shall prescribe, and thereupon he shall be entitled to receive a certificate of such registration from said department, provided, however, that such employing or master plumber shall, at the time of applying for such registration, hold a certificate of competency from the examining board of plumbers of said city. The time for making such registration shall be during the month of March in each year. Where, however, a person obtains a certificate of competency at a time other than in the month of March in any year, he may register within thirty days after obtaining such certificate of competency, but he must also register in the month of March in each year as above provided. Such registration may be canceled by the superintendent of buildings for a violation of the rules and regulations for the plumbing and drainage of such city, duly adopted and in force pursuant to the provisions of this act, or whenever the person so registered ceases to be a master or employing plumber, after a hearing had before said superintendent, and upon a prior notice of not less than ten days, stating the grounds of complaint and served upon the person charged with the violation of the aforesaid rules and regulations. After the passage of this act it shall be lawful for any person or co-partnership to engage in, or carry on the trade, business or calling of employing or master plumber in the city of New York, unless the name and address of such person and each and every member of such co-partnership shall have been registered as above provided.

§ 2. In the city of New York it shall be unlawful for any person or persons to expose the sign of "Plumber" or "Plumbing," or a sign containing words of similar import and meaning, unless said person or persons shall have obtained a certificate of competency from the examining board of plumbers of said city, and shall have registered as herein provided.

§ 3. The department of buildings is hereby charged with the enforcement of the provisions of this act, through the superintendent of buildings, and in addition to such officers or employees as are now provided by law to be appointed by him, he shall appoint inspectors of plumbing. It shall not be lawful for any inspector of plumbing of said department to engage in conducting or carrying on business as a plumber while holding office therein. Any inspector of plumbing for any neglect of duty or omission to properly perform his duty, or violation of rules, or neglect or disobedience of orders, or incapacity, or absence without leave, may be punished by the superintendent of buildings by forfeiting and withholding pay for a specified time, or by suspension from duty with or without pay; but this provision shall not be deemed to abridge the right of said superintendent to remove or dismiss any inspector of plumbing from the service of said department at any time in his discretion.

§ 4. The duties of inspectors of plumbing appointed under the provisions of this act, in addition to those which may be required by the superintendent of buildings, shall be to inspect the construction and alteration of all plumbing work performed in said city, and to report in writing the result of such inspection to the superintendent. The said inspectors shall also ascertain whether the employing or master plumber having charge of the construction, repairing or alteration of any plumbing work performed in the city of New York is registered, as herein provided, and if such person is not registered, then such inspector shall forthwith report to said department the name of such plumber. The department of buildings may present a petition to a justice of the supreme court or to a special term thereof for an order restraining the person so reported from acting as an employing or master plumber until he registers pursuant to the provisions of this act. Said petition shall state that the said person is engaged in plumbing work as an employing or master plumber without having so registered, and shall be more than six days after the granting thereof, to show cause why he should not be permanently enjoined until he has obtained a certificate of registration as herein required. A copy of such petition and order shall be served upon such person not

less than twenty-four hours before the return thereof. On the date specified in such order the justice or court before whom the same is returnable shall hear the proofs of the parties, and may, if he deems necessary, take testimony in relation to the allegations of the petition. If the justice or court is satisfied that such plumber is practicing without having registered as provided by this act, an order shall be granted enjoining him from acting as an employing or master plumber until he has so registered. No undertaking shall be required as a condition to the granting or issuing of such injunction order or by reason thereof. If after the entry of such order in the county clerk's office of the city and county of New York such person shall, in violation of such order, practice as employing or master plumber, he shall be deemed guilty of a criminal contempt of court and be punished as for a criminal contempt in the manner provided by the code of civil procedure, but in no case shall the department of buildings be liable for costs in any such proceeding but they may be allowed against the defendant or defendants in the discretion of the justice or court.

§ 5. Hereafter the plumbing and drainage of all buildings, both public and private, in the city of New York, shall be executed in accordance with the rules and regulations adopted by the superintendent of buildings. Said rules and regulations and any change thereof shall be published in the "City Record" on eight successive Mondays before the same shall become operative. Suitable drawings and descriptions of the said plumbing and drainage shall in each case be submitted and placed on file in the department of buildings, and the same shall not be commenced or proceeded with until the said drawings and descriptions shall have been so filed and approved by the superintendent of buildings. Repairs or alterations of such plumbing or drainage may be made without the filing and approval of drawings and descriptions in the department of buildings, but such repairs or alterations shall not be construed to include cases where new vertical or horizontal lines of soil, waste, vent or leader pipes are proposed to be used. Notice of such repairs or alterations shall be given to the said department before the same are commenced in such cases as shall be prescribed by the rules and regulations of the said department, and the work shall be done in accordance with the said rules and regulations.

§ 6. Whenever any inspector or any person reports a violation of any of said rules and regulations, or a deviation from any said drawings and descriptions filed with and approved by the superintendent of buildings, said department shall first serve

a notice of such violation upon the plumber doing the work. Such notice may be served personally or by mail, and if by mail it may be addressed to such plumber at the address registered by him at the department of buildings, but the failure of an employing or master plumber to register pursuant to the provisions of this act will relieve the said department from the requirement of giving such notice. Unless said violation is removed or in process of removal within three days of the date of serving or mailing such notice, exclusive of the day of serving or mailing, the said department may proceed as hereinafter provided. A master or employing plumber within the meaning of this act is any person who hires or employs a person or persons to do plumbing work.

§ 7. Any person violating any of the provisions of sections one, two and five of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined for each offense in a sum not exceeding two hundred and fifty dollars, or by imprisonment for a term not exceeding three months, or by both, and in addition shall forfeit any certificate of competency or registration which he may hold under the provisions thereof.

§ 8. The attorney of said department of buildings shall prosecute all actions for injunction authorized under the provisions of this act, and shall also take charge of the prosecution of all persons under section seven thereof.

§ 9. Nothing herein contained shall be so construed as to abrogate or impair any of the powers of the health department of The City of New York.

## GENERAL STATUTE RELATING TO PLUMBING AND DRAINAGE.

### Examining Boards of Plumbers in Cities.

§ 40. The existing boards for the examination of plumbers in cities of this state are continued and each shall hereafter be known as the examining board of plumbers. Such board in each city shall continue to consist of five persons to be appointed by the mayor, of whom two shall be employing or master plumbers of not less than ten years' experience in the business of plumbing, and one shall be a journeyman plumber of like experience, and the other members of such board shall be the chief inspector of plumbing and drainage of the board of health of such city, or officer performing the duties of such inspector, and the chief engineer having charge of sewers in such city; but, in the event of there being no such officers in such city, then any two other officers having charge or supervision of the plumbing, drainage, or sewerage whom the mayor shall designate or appoint, or two members of the board of health of such city having like duties or acting in like capacities.

### Term of Office; Vacancies.

§ 41. The term of office of each member of such board shall be three years from the first day of January following his appointment. Vacancies occurring by expiration of a term shall be filled by the mayor for a full term. Vacancies by death, removal, inability to act, resignation, or removal from the city of any member shall be filled by him for the unexpired term. The chief inspector of plumbing and drainage and the engineer in charge of sewers, or the officers holding equivalent positions or acting in like capacities designated or appointed by the mayor as herein provided, shall be ex-officio members of such examining board; and when they shall cease to hold their offices by reason or on account of which they were so designated or appointed, their successors shall act on the examining board in their stead.

### Compensation of Members of Board.

§ 42. The master and journeymen plumbers serving as members of such board shall severally be paid the rate of five dollars

per day for each day's service when actually engaged in the performance of the duties pertaining to the office; but such compensation shall not exceed five dollars per month in a city of the third class, nor the sum of ten dollars per month in a city of the second class, nor the sum of twenty dollars per month in a city of the first class. It shall be the duty of such ex-officio members of the board of examiners to discharge their duties as members of such board without compensation thereof.

**Qualifications.**

§ 43. All members of such board shall be citizens and actual residents of the cities in which they are appointed.

**Powers and duties.**

§ 44. The several examining boards of plumbers shall have power and it shall be their duty:

1. To meet at stated intervals in their respective cities; they shall also meet whenever the board of health of such city or the mayor thereof shall, in writing, request them to do so.

2. To have jurisdiction over and to examine all persons desiring or intending to engage in the trade, business, or calling of plumbing as employing plumbers in the city in which such board shall be appointed with the power of examining persons applying for certificates of competency as such employing or master plumbers or as inspectors of plumbing, to determine their fitness and qualifications for conducting the business as master plumbers or to act as inspectors of plumbing, and to issue certificates of competency to all such persons who shall have passed a satisfactory examination before such board and shall be by it determined to be qualified for conducting the business as employing or master plumbers or competent to act as inspectors of plumbing.

3. To formulate in conjunction with the local board of health of the city or an officer, board, or body performing the duties of a board of health, a code of rules regulating the work of plumbing and drainage in such city, including the materials, workmanship and manner of executing such work, and from time to time to add to, amend, or alter the same.

4. To charge and collect from each person applying for examination the sum of five dollars for each examination made by such board, and all moneys so collected shall be paid over by the board monthly to the chamberlain or treasurer of such city in which such board shall be appointed.

**Examinations; Conducting Business Without Certificate Prohibited.**

§ 45. A person desiring or intending to conduct the trade, business or calling of a plumber or of plumbing in a city of this state as employing or master plumber, shall be required to submit to an examination before such examining board of plumbers as to his experience and qualifications for such trade, business or calling, and it shall not be lawful in any city of this state for a person to conduct such trade, business, or calling, unless he shall have first obtained a certificate of competency from such board of the city in which he conducts or proposes to conduct such business.

**Registration, When Required.**

§ 46. Every employing or master plumber carrying on his trade, business or calling in any city of this state shall register his name and address at the office of the board of health of the city in which he shall conduct such business, under such rules as the respective boards of health of each of the cities shall prescribe, and thereupon he shall be entitled to receive a certificate of such registration, provided, however, that such employing or master plumber shall at the time of applying for such registration hold a certificate of competency from an examining board of plumbers.

**Cancellation of Registration; Notice.**

§ 47. Such registration may be canceled by such board of health for a violation of the rules and regulations for the plumbing and drainage of such city duly adopted and enforced therein, after a hearing had before such board of health and upon a prior notice of not less than ten days stating the ground of complaint and served on the person charged with the violation, but such revocation shall not be operative unless concurred in by the local board of examiners. It shall not be lawful for any person to engage in or carry on the trade, business or calling of an employing or master plumber in any of the cities of this state, unless his name and address shall have been registered in the city in which he carries on or conducts such business.

**Inspectors; Qualifications; Notice.**

§ 48. The local board of health or the commissioner or commissioners of the board of health, or the department thereof, as the case may be, shall detail, designate or appoint an in-

spector or inspectors of plumbing, subject, however, to the provisions or limitations of law, regulating the appointment of such inspectors by such commissioner or commissioners or board or department of health of such city. All inspectors of plumbing who are detailed, designated or appointed shall be practical plumbers and shall not be engaged directly or indirectly in the business of plumbing during the period of their appointment. They shall be citizens and actual residents of the city in which they are appointed, and before entering upon the discharge of their duties as such inspectors, shall each be required to obtain a certificate of competency from said examining board. They shall be entitled to receive compensation not exceeding five dollars per day, for each day of actual service, to be fixed by the board, commission or department making such appointment.

**Duties of Inspectors; Reports.**

§ 49. The inspector or inspectors of plumbing appointed under the provisions of the preceding sections, in addition to the duties prescribed by law, and those which may be enjoined or required by the commissioner of health, the board of health, or the health department of the city in which they shall be appointed, shall be to inspect the construction and alteration of all plumbing work performed in such city, and to report in writing the results of such inspection to such commissioner of health or the board of health or the health department of their respective cities. They shall also report in like manner any person engaged in or carrying on the business of employing plumber, without having the certificate hereinbefore provided.

**Expiration and Renewals of Certificates and Licenses.**

§ 50. All certificates of registration issued under the provisions of the preceding sections and all licenses authorizing connections with street sewers or water mains shall expire on the thirty-first day of December of the year in which they shall be issued, and may be renewed within thirty days preceding such expiration. Such renewals to be for one year from the first day of January in each year.

**Notice of Violation of Rules.**

§ 51. Whenever any inspector or other person reports a violation of any of such rules and regulations for plumbing and drainage, or a deviation from any officially approved plan or specification for plumbing and drainage filed with any board

or department, the local board of health shall first serve a notice of the violation thereof upon the master plumber doing the work, if a registered plumber.

**Notice, How Served; Proceedings When Violations Not Removed.**

§ 52. Such notice may be served personally or by mail, and if by mail it may be addressed to such master plumber at the address registered by him with the local board of health, but the failure of a master plumber to register will relieve any board of health from the requirement of giving notice of violation. Unless the violation is removed within three days after the day of serving or mailing such notice, exclusive of the day of serving or mailing, the board of health may proceed according to law.

**Plumbing and Drainage to Be Executed According to Rules.**

§ 53. The plumbing and drainage of all buildings, both public and private, in each of the cities of the state shall be executed in accordance with the rules and regulations adopted by the local board of examining plumbers, in conjunction with the board of health for plumbing and drainage, and all repairs and alterations in the plumbing and drainage of all buildings heretofore constructed shall also be executed in accordance with such rules and regulations; but this section shall not be construed to repeal any existing provisions of law requiring plans for the plumbing and drainage of new buildings to be filed with any local board of health and to be previously approved in writing by such board of health and to be executed in accordance therewith, except that, in case of any conflict with such plans, rules and regulations of the board of examiners the latter shall govern.

**Office Room; Expenses a City Charge.**

§ 54. Each of such examining boards of plumbers shall have power to procure suitable quarters for the transaction of business, to provide the necessary books and stationery, and to employ a clerk to keep such books and record the transactions of such board. The board of estimate and apportionment or the common council of a city, as the case may be, shall annually insert in their tax levy a sufficient sum to meet all the expenditures incurred under the provisions of this article. The expenses incurred by the several examining boards of plumbers

in the execution and performance of the duties imposed by this article shall be a charge on the respective cities and shall be audited, levied, collected, and paid in the same manner as other city charges are audited, levied, collected and paid.

**Violations, How Punished.**

§ 55. Any person violating any of the provisions of this article, or any rules or regulations of the board of health or of the examining board of plumbers in any city regulating the plumbing and drainage of buildings in such city, shall be guilty of a misdemeanor, and on conviction, if a master plumber, shall in addition forfeit any certificate of competency or registration which he may hold under the provisions thereof.

**Issue of Licenses to Connect With Sewers and Water Mains, Restricted.**

§ 56. The commissioner of public works of any city, or the officer or officers acting in a like capacity in any of the cities of this state, and having charge of the sewers and water mains therein, shall not issue a license to any one to connect with the sewers or with the water mains of such cities, unless such person has obtained and shall produce a certificate of competency from the examining board of such city.

**Article Limited.**

§ 57. Nothing in this article shall affect or supersede any provision of chapter eight hundred and three of the laws of eighteen hundred and ninety-six, relating to plumbing in The City of New York.